DĀYA-BHĀGA

AND

MITĀKṢARĀ

Parimal Sanskrit Series No-13

DĀYA-BHĀGA
AND
MITĀKSARĀ

TWO TREATISES ON THE

HINDU
LAW OF INHERITANCE

Translated into English with annotations
by

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PREFACE.

NO branch of jurisprudence is more important than the law of successions or inheritance; as it constitutes that part of any national system of laws, which is the most peculiar and distinct, and which is of most frequent use and extensive application.

In the law of contracts, the rules of decision, observed in the jurisprudence of different countries, are in general dictated by reason and good sense; and rise naturally, though not always obviously, from the plain maxims of equity and right.

As to the criminal law, mankind are in general agreed in regard to the nature of crimes: and, although some diversity necessarily results from the exigencies of different states of society, leading to considerable variation in the catalogue of offences, and in the scale of relative guilt and consequent punishment; yet the fundamental principles are unaltered, and may perhaps be equally traced in every known scheme of exemplary and retributive justice.

But the rules of succession to property, being in their nature arbitrary, are in all systems of law merely conventional. Admitting even that the succession of the offspring to the parent is so obvious as almost to present a natural and universal law; yet this very first rule is so variously modified by the usages of different nations, that its application at least must be acknowledged to be founded on consent rather than on reasoning. In the laws of one people the rights of primogeniture are established; in those of another the equal succession of all the male offspring prevails; while the rest allow the participation of the female with the male issue, some in

equal, other in unequal proportions. Succession by right of representation, and the claim of descendants to inherit in the order of proximity, have been respectively established in various nations, according to the degree of favour, with which they have viewed those opposite pretensions. Proceeding from linear to collateral succession, the diversity of laws prevailing among different nations, is yet greater, and still more forcibly argues the arbitrariness of the rules. Nor is it indeed practicable to reduce the rules of succession as actually established in any existing body of law, to a general or leading principle, unless by the assumption of some maxim not necessarily nor naturally connected with the canons of inheritance.

In proportion then, as the law of successions is arbitrary and irreducible to fixed and general principles, it is complex and intricate in its provisions; and requires, on the part of those entrusted with the administration of justice, a previous preparation by study; for its rules and maxims cannot be rightly understood, when only hastily consulted as occasions arise. Those occasions are of daily and of hourly occurrence: and, on this account, that branch of law should be carefully and diligently studied.

In the *Hindu* jurisprudence in particular, it is the branch of law, which specially and almost exclusively merits the attention of those who are qualifying themselves for the line of service in which it will become their duty to administer justice to our *Hindu* subjects, according to their own laws.

A very ample compilation on this subject is included in the Digest of *Hindu* law, prepared by JAGANNAT'HA under the directions of Sir WILLIAM JONES. But copious as that work is, it does not supersede the necessity of further aid to the study of the *Hindu* law of inheritance. In the preface to the translation of the Digest, I hinted an opinion unfavorable to the arrangement of it, as it has been executed by the native compiler. I have been confirmed in that opinion of

the compilation, since its publication; and indeed the author's method of discussing together the discordant opinions maintained by the lawyers of the several schools, without distinguishing in an intelligible manner which of them is the received doctrine of each school, but on the contrary leaving it uncertain whether any of the opinions stated by him do actually prevail, or which doctrine must now be considered to be in force and which obsolete, renders his work of little utility to persons conversant with the law, and of still less service to those who are not versed in *Indian* jurisprudence; especially to the *English* reader, for whose use, through the medium of translation, the work was particularly intended.

Entertaining this opinion of it, I long ago undertook a new compilation of the law of successions with other collections of *Hindu* law, under the sanction of the government of *Bengal*, for preparing for publication a supplementary Digest of such parts of the law as I might consider to be most useful. Its final completion and publication have been hitherto delayed by important avocations; and it has been judged meantime advisable to offer to the public in a detached form, a complete translation of two works materially connected with that compilation.

They are the standard authorities of the *Hindu* law of inheritance in the schools of *Benares* and *Bengal* respectively; and considerable advantage must be derived to the study of this branch of law, from access to those authentic works, in which the entire doctrine of each school, with the reasons and arguments by which it is supported, may be seen at one view and in a connected shape.

In a general compilation, where the authorities are greatly multiplied, and the doctrines of many different schools, and of numerous authors are contrasted and compared, the reader is at a loss to collect the doctrines of a particular school and to follow the train of reasoning by which they are maintained. He is con-

founded by the perpetual conflict of discordant opinions and jarring deductions; and by the frequent transition from the positions of one sect to the principles of another. It may be useful then, that such a compilation should be preceded by the separate publication of the most approved works of each school. By exhibiting in an exact translation the text of the author with notes selected from the glosses of his commentators or from the works of other writers of the same school, a correct knowledge of that part of the *Hindu* law, which is expressly treated by him, will be made more easily attainable, than by trusting solely to a general compilation. The one is best adapted to preparatory study; the other may afterwards be profitably consulted, when a general, but accurate knowledge has been thus previously obtained by the separate study of a complete body of doctrine.

These considerations determined the publication of the present volume. It comprehends the celebrated treatise of JÍMU'TA-VA'HANA on successions, which is constantly cited by the lawyers of *Bengal* under the emphatic title of *Dáya-Bhága* or "inheritance;" and an extract from the still more celebrated *Mitácshara*, comprising so much of this work as relates to inheritance. The range of its authority and influence, is far more extensive than that of JÍMU'TA-VA'HANA's treatise; for it is received in all the schools of *Hindu* law, from *Benares* to the southern extremity of the peninsula of *India*, as the chief groundwork of the doctrines which they follow, and as an authority from which they rarely dissent.

The works of other eminent writers have, concurrently with the *Mitácshara*, considerable weight in the schools of law which have respectively adopted them; as the *Smrĭti-chandricá** in the south of *India*; the *Chintámani*, *Retnácara* and *Viváda chandra*† in *Mit'hilá*;

* By DE'VAN'D'A-BHAT'T'A. This excellent treatise on judicature is of great and almost paramount authority, as I am informed, in the countries occupied by the *Hindu* nations of *Drávira*, *Tailanga*, and *Carnáta*; inhabiting the greatest part of the peninsula or *Dekhin*.

† *Viváda chintáman'i*, *Vyavahára chintáman'i*, and other treatises of law by

the *Víramitródaya* and CAMALA'CARA* at *Benares*, and the *Mayúc'ha*† among the *Marahāttas*: but all agree in generally deferring to the authority of the *Mitácshara*, in frequently appealing to its text, and in rarely and at the same time modestly dissenting from its doctrines on particular questions. The *Bengal* school alone, having taken for its guide JÍMU'TA-VA'HANA'S treatise, which is on almost every disputed point opposite in doctrine to the *Mitácshara*, has no deference for its authority. On this account, independently of any other considerations, it would have been necessary to admit into the present volume either his treatise, or some one of the abridgments of his doctrine which are in use, and of which the best known and most approved is RAGHUNANDANA'S *Dáyatatwa*. But the preference appeared to be decidedly due to the treatise of JÍMU'TA-VA'HANA himself; as well because he was the founder of this school, being the author of the doctrine which it has adopted; as because the subjects, which he discusses, are treated by him with eminent ability and great precision; and for this further reason, that quotations from his work, or references to it, which must become necessary in a general compilation of the *Hindu* law of inheritance, can be but very imperfectly intelligible without the opportunity of consulting the whole text of his close reasoning and ample disquisitions.

Having selected, for reasons which have been here explained, the *Dáya-bhága* of JÍMU'TA-VA'HANA and the *Mitácshara* on inheritance, for translation and separate publication, I was led in course to draw the chief part of the annotations necessary to the illustration of the text, from the commentaries on those works. Notes have been also taken from original treatises, of which likewise brief notices will be here given, that their authority may be appreciated.

VA'CHESPATI-MIS'RA. *Vivāda retnācara, Vyavahára retnácara*, and other compilations by *Panditas* employed by CHAN'D'E'S'WARA; *Vivāda-chandra* by MISARU MIS'RA or rather by his aunt LAC'HIMA' or LACSHMI'-DE'VI'.

* *Víramitródaya*, an ample and very accurate digest by MITRA MIS'RA. *Vivāda-tān'd'ava* and other works of CAMALA'CARA.

† *Vyavahára-mayuc'ha* and other treatises by NI'LACANT'HA.

In the selection of notes from commentaries and other sources, the choice of them has not been restricted to such as might be necessary to the elucidation of the subject as it is exhibited in the *English* version; but variations in the reading and interpretation of the original text have been regularly noticed, with the view of adapting this translation to the use of those who may be induced to study it with the original *Sanscrit* text. The mere *English* reader will not be detained by these annotations, which he will of course pass by.

Having verified with great care the quotations of authors, as far as means are afforded to me by my own collection of *Sanscrit* law books (which includes, I believe, nearly all that are extant;) I have added at the foot of the page notes of reference to the places in which the texts are found. They will be satisfactory to the reader as demonstrating the general correctness of the original citations. The inaccuracies, which have been remarked, are also carefully noticed. They are few and not often important.

The sources from which the annotations have been chiefly drawn, are the following.

The commentary of S'RÍCRISHN'A TERCA'LANCA'RA on the *Dáya-bhága* of JÍMU'TA-VA'HANA has been chiefly and preferably used. This is the most celebrated of the glosses on the text. It is the work of a very acute logician, who interprets his author and reasons on his arguments, with great accuracy and precision; and who always illustrates the text, generally confirms its positions, but not unfrequently modifies or amends them. Its authority has been long gaining ground in the schools of law throughout *Bengal*; and it has almost banished from them the other expositions of the *Dáya-bhága*; being ranked, in general estimation, next after the treatises of JÍMU'TA-VA'HANA and of RAGHUNANDANA.

An original treatise by the same author, entitle *Dáya-crama-sangraha*, contains a good compendium of the law of inheritance according to JÍMU'TA-VA'HANA's text, as expounded in his commentary. It has been occasion-

ally quoted in the notes: its authority being satisfactorily demonstrated by the use which was made of it in the compilation of the Digest translated by Mr. HALHED; the compilers of which transcribed largely from it, though without acknowledgment.

The earliest commentary on JÍMU'TA-VA'HANA is that of S'RÍNA'T'H'A ACHA'RYA CHU'D'A'MAN'I. It has been constantly in SRÍCRĬSHN'A'S view, who frequently copies it; but still oftener cites the opinions of CHU'D'A'MAN'I to correct or confute them. Notwithstanding this frequent collision of opinions, the commentary of CHU'D'A'MAN'I must be acknowledged as, in general, a very excellent exposition of the text; and it has been usefully consulted throughout the progress of the translation, as well as for the selection of explanatory notes.

Another commentary, anterior to S'RÍCRĬSHN'A'S, but subsequent to CHU'D'A'MAN'I'S, is that of ACHYUTA CHACRAVATÍ, (author likewise of a commentary on the *S'rádd'ha vivéca.*) It is in many places quoted for refutation, and in more is closely followed by S'RÍCRĬSHN'A, but always without naming the author. It contains frequent citations from CHU'D'A'MAN'I, and is itself quoted with the name of the writer by MAHE'S'WARA. This work is upon the whole an able interpretation of the text of JIMU'TA-VA'HANA, and has afforded much assistance in the translation of it, and furnished many notes illustrating its sense.

The commentary of MAHE'S'WARA is posterior to those of CHU'D'A'MAN'I and of ACHYUTA, both of which are cited in it; and is probably anterior to S'RÍCRĬSHN'A'S, or at least nearly of the same date, if my information concerning these authors be correct;* for they appear to have been almost contemporary; but MAHE'S'WARA seemingly a little the elder of the two. They differ greatly in their expositions of the text, both as to the meaning and as to the manner of deducing the sense:

* Great grandsons of both these writers were living in 1806: and the grandson (daughter's son) of S'RÍCRĬSHN'A was alive in 1790. Both consequently must have lived in the first part of the last century. They are modern writers; and S'RÍCRĬSHN'A is apparently the most recent.

but neither of them affords any indication of his having seen the other's work. A comparison of these different and independent interpretations has been of material aid to a right understanding and correct version of obscure and doubtful passages in JÍMU'TA-VA'HANA's text.

Of the remaining commentaries, of which notices had been obtained, only one other has been procured. It bears the name of RAGHUNANDANA, the author of the *Smrĭti-tatwa,* and the greatest authority of *Hindu* law in the province of *Bengal.* In proportion to the celebrity of the writer was the disappointment experienced on finding reason to distrust the authenticity of the work. But not being satisfied of its genuineness, and on the contrary suspecting it strongly of bearing a borrowed name, I have made a very sparing use of this commentary either in the version of the text or in the notes.

The *Dáyatatwa,* or so much of the *Smrĭti-tatwa* as relates to inheritance, is the undoubted composition of RAGHUNANDANA; and, in deference to the greatness of the author's name and the estimation in which his works are held among the learned *Hindus* of *Bengal,* has been throughout diligently consulted and carefully compared with JÍMU'TA-VA'HANA's treatise, on which it is almost exclusively founded. It is indeed an excellent compendium of the law, in which not only JÍMU'TA-VA'HANA's doctrines are in general strictly followed, but are commonly delivered in his own words in brief extracts from his text. On a few points, however, RAGHUNANDANA has differed from his master; and in some instances he has supplied deficiencies. These, as far as they have appeared to be of importance, have furnished annotations; for which his authority is of course quoted.

A commentary by CA'S'IRA'MA on RAGHUNANDANA'S *Dáyatatwa,* has also supplied a few annotations, and has been of some use in explaining JÍMU'TA-VAHANA's commentators, being written in the spirit of their exposition of that author's text, particularly S'RÍCRĬSHN'A's gloss; and often in the very words of that commentator.

The *Dáya-rahasya* or *Smriti-ratnavali* of RA'MA-NA'THA VIDYA'-VA'CHES'PATI, having obtained a considerable degree of authority in some of the districts of *Bengal*, has been frequently consulted, and is sometimes quoted in the notes. It is a work not devoid of merit: but, as it differs in some material points from both JÍMU'TA-VA'HANA and RAGHUNANDANA, it tends too much to unhinge the certainty of the law on some important questions of very frequent recurrence. The same author has written a commentary on JÍMU'TA-VA'HANA'S *Daya-bhaga*, and makes a reference to it at the close of his own original treatise. My researches, however, and endeavours to procure a copy of it, have not been successful. I should else have considered it right to advert frequently to it in the illustrations of the text.

Other treatises on inheritance according to the doctrines received in *Bengal*, as the *Daya-nirn'aya* of S'RÍCARA BHAT'T'A'CHA'RYA and one or two more which have fallen under my inspection, are little else than epitomes of the work of RAGHUNANDANA or of JÍMU'TA-VA'HANA: and on this account have been scarcely at all used in preparing the present publication.

The remaining names, which occur in the notes, are of works or of their authors belonging to other schools. These are rarely, I may say never, cited, unless for variations in the reading of original texts of legislators; excepting only the *Víramitródaya* of MITRA-MIS'RA; from whose work a few quotations may be found in the notes, contradicting passages of the text. This author, in the compilation mentioned, uniformly examines and refutes the peculiar doctrines maintained by JÍMU'TA-VA'HANA and RAGHUNANDANA: but it did not fall within the design of the present publication to exhibit the controversial arguments of the modern opponents of the *Bengal* school; and quotations from his work have been therefore sparingly inserted in the notes to JÍMU'TA-VA'HANA'S treatise.

The commentaries on the *Mitacshara* of VIJNYA'NE'S'WARA are less numerous. Of four, concerning which I have notices, two only have been procured. The *Subód'hiní* by VIS'WE'S'WARA BHAT'T'A; and a commentary by a modern author, BA'LAM-BHAT'T'A.

The *Subód'hiní* is a collection of notes elucidating the obscure passages of the *Mitácshara*, concisely, but perspicuously. It leaves few difficulties unexplained, and dwells on them no further than is necessary to their elucidation. The commentator is author likewise of a compilation entitled *Madana-parijata*, chiefly on religious law, but comprising a chapter on inheritance, a topic connected with that of obsequies. To this work he occasionally refers from his commentary. Both therefore have been continually consulted in the progress of the translation, and have furnished a great proportion of the annotations.

BA'LAM-BHAT'T'A's work is in the usual form of a perpetual comment. It proceeds, sentence by sentence, expounding every phrase, and every term, in the original text. Always copious on what is obscure and often so on what is clear, it has been a satisfactory aid in the translation, even where it was busy in explaining that which was evident: for it has been gratifying to find, though no doubts were entertained, that the intended interpretation had the sanction of a commentator. BA'LAM-BHAT'T'A's gloss in general follows the *Subód'hiní* as far as this goes. It has supplied annotations where VIS'WE'S'WARA's commentary was silent; or where the explanation, couched in VIS'WE'S'WARA's concise language, might be less intelligible to the *English* reader.

VIJNYA'NE'S'WARA's *Mitácshara* being a commentary on the institutes of YA'JNYAWALCYA, it has been a natural suggestion to compare his expositions of the law, and of his author's text in particular, with the

commentaries of other writers on the same institutes, viz., the ancient and copious gloss of APARA'RCA of the royal house of *Silára*, and the modern and succinct annotations of SU'LAPA'N'I in his comment entitled *Dípacalicá*. A few notes have been selected from both these works, and chiefly from that of APARA'RCA.

For like reasons the commentators on the institutes of other ancient sages have been similarly examined; they are those of ME'D'HA'TIT'HI and CULLU'CABHAT'T'A on MENU; HARADATTA's gloss on GAUTAMA, which is entitled *Mitácshara*; NANDA-PANDITA'S commentary under the title of *Vaijayantí*, on the institutes which bear the name of the god VISHN'U; and those of the same author, and of MA'D'HAVA A'CHA'RYA, on PARA'S'ARA.

NANDA-PAN'D'ITA is author also of an excellent treatise on adoption, entitled *Dattaca-mímánsá*, of which much use has been made, among other authorities, in the enlarged illustrations which it has been judged advisable to add to the short chapter contained in the *Mitácshara* on this important topic of *Hindu* law.

The same writer appears, from a reference in a passage of his gloss on VISHN'U to have composed a commentary on the *Mitácshara* under the title of *Pratitácshará*. Not having been able to procure that work, but concluding that the opinions, which the writer may have there delivered, correspond with those which he has expressed in his other compositions, I have made frequent references to the rest of his writings, and particularly to his commentary on VISHN'U, which is a very excellent and copious work, and might serve, like the *Mitácshara*, as a body or digest of law.

All the works of greatest authority in the several schools which hold the *Mitácshara* in veneration, have been occasionally made to contribute to the requisite elucidation of the text, or have been cited when neces-

sary for such deviations from its doctrine, as it has been judged right to notice in the annotations. It will be sufficient to particularize in this place the *Víramitródaya* before mentioned, of which the greatest use has been made; that compilation conforming generally to the doctrines of the *Mitácshara,* the words of which it very commonly cites with occasional elucidations of the text interspersed, or with express interpretations of it subjoined, or sometimes with the substitution of a paraphrase for parts of the original text. All these have been found useful auxiliaries to the professed commentaries and glosses.

This brief account of the works from which notes have been selected or aid derived, will sufficiently make known the plan on which the text of the *Mitácshara* and that of JÍMU'TA-VA'HANA have been translated and elucidated, and the materials which have been employed for that purpose. It is hardly necessary to add, by way of precaution to the reader, that he will find distinguished by hyphens, whatever has been inserted from the commentaries into the text, to render it more easily intelligible; a reference to the particular commentary being always made in the notes at the foot of the page.

Concerning the history and age of the authors whose works are here introduced to the attention of the *English* reader, some information will be expected. On these points, however, the notices, which have been collected, are very imperfect, as must ever be the case in regard to the biography of *Hindu* authors.

VIJNYA'NE'S'WARA, often called VIJNYA'NA-YÓGÍ, the author of the *Mitácshara,* is known to have been an ascetic, and belonged, as is affirmed, to an order of *Sannyasís,* said to have been founded by SANCARA-A'CHA'RYA. No further particulars concerning him have been preserved. A copy of his work has indeed been

shown to me, in which, at its close, he is described as a contemporary of VICRAMA'DITYA. But the authority of this passage, which is wanting in other copies, is not sufficient to ground a belief of the antiquity of the book; especially as it cannot be well reconciled to the received opinion above noticed of the author's appertaining to a religious order founded by SANCARA-A'CHA'RYA, whose age cannot be carried further back at the utmost than a thousand years. The limit of the lowest recent date which can possibly be assigned to this work, may be more certainly fixed from the ascertained age of the commentary; the author of which composed likewise (as already observed) the *Madana-parijata,* so named in honor of a prince called MADANA-PA'LA, apparently the same who gives title to the *Madana-vinoda,* dated in the fifteenth century of the *Sambat* era.* It may be inferred as probable, that the antiquity of the *Mitácshara* exceeds 500 and is short of 1000 years. If indeed DHA'RES'WARA, who is frequently cited in the *Mitácshara* as an author, be the same with the celebrated RA'JA' BHOJA, whose title may not improbably have been given to a work composed by his command, according to a practice which is by no means uncommon, the remoter limit will be reduced by more than a century; and the range of uncertainty as to the age of the *Mitácshara* will be contracted within narrower bounds.

Of JÍMU'TA-VA'HANA as little is known. The name belongs to a prince of the house of SILA'RA, of whose history some hints may be gathered from the fabulous adventures recorded of him in popular tales; and who is mentioned in an ancient and authentic inscription found at *Salset.*† It was an obvious conjecture, that the name of this prince might have been affixed to a treatise of law composed perhaps under his patronage or by his directions. That, however, is not the opinion of the

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* 1431. *Sambat,* answering to A. D. 1375.

† Asiatic Researches, Vol. I. p. 357.

learned in *Bengal;* who are more inclined to suppose, that the real author may have borne the name which is affixed to his work, and may have been a professed lawyer who performed the functions of judge and legal adviser to one of the most celebrated of the *Hindu* sovereigns of *Bengal.* No evidence, however, has been adduced in support of this opinion; and the period when this author flourished is therefore entirely uncertain. He cites several earlier writers; but, their age being not less doubtful than his own, no aid can be at present derived from that circumstance, towards the determination of the limits between which he is to be placed. His commentators suppose him in many places to be occupied in refuting the doctrines of the *Mitacshara.* Probably they are right; it is however possible, that he may be there refuting the doctrines of earlier authors, which may have subsequently been repeated from them in the later compilation of VIJNYA'NE'S'WARA. Assuming, however, that the opinion of the commentators is correct; the age of JÍMU'TA-VA'HANA must be placed between that of VIJNYA'NE'S'WARA, whose doctrine he opposes, and that of RAGHUNANDANA who has followed his authority. Now RAGHUNANDANA'S date is ascertained at about three hundred years from this time; for he was pupil of VA'SUDE'VA SA'RVABHAUMA, and studied at the same time with three other disciples of the same preceptor, who likewise have acquired great celebrity, viz., SÍRÓMAN'I, CRĬSHN'A'NANDA, and CHAITANYA: the latter is the well known founder of the religious order and sect of *Vaishn'avas* so numerous in the vicinity of *Calcutta*, and so notorious for the scandalous dissoluteness of their morals; and, the date of his birth being held memorable by his followers, it is ascertained by his horoscope, said to be still preserved, as well as by the express mention of the date in his works, to have been 1411 of the *Saca* era, answering to Y. C. 1489: consequently RAGHUNANDANA, being his contemporary, must have flourished at the beginning of the sixteenth century.

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work of the Marahátta law, have been translated; but as yet we have no translation of the *Smrĭti-chandrica*, the foundation of the Dravada law. All we know of this work has hitherto been gathered from the replies of the Pundits whom the Courts were required formerly to consult when doubtful points of Hindoo Law arose. We understand that a translation of the *Chandrica* is in course of preparation, and if well executed, will enable the Indian Lawyer to determine, better than he is at present able, the exact degrees of difference prevailing in the various schools which have acknowledged the doctrines of the *Mitácshara* as their guide.

The original translation of the *Jímu'ta-va'hana* and the *Mitácshara* was first published in Calcutta in 1810, and subsequently re-published in Madras in 1822. Both publications were quarto editions and contained no index, and both being out of print the publisher has been induced, in consequence of the frequent calls he has had for the work, to offer a re-print to the public. By the advice of gentlemen of high standing in the profession he has adopted the octavo size, but, notwithstanding, has preserved the original paging unaltered, so that the present can as readily be referred to as the former editions. An index has also been added with the view to add to the utility of both works.

W. SLOAN

March, 1867.

PREFACE

TO THE THIRD EDITION.

OF all the original Hindoo Law Treatises hitherto translated more especially as respects inheritance, succession, partitions, and the rights incidental to those subjects, the *Ji'mu'ta-va'hana* and the *Mita'cashara* stand pre-eminent. Both have been translated by H. T. COLEBROOKE, whose accuracy, so far as our researches extend, does not appear to have ever been called in question. The *Jimu'ta-va'hana* contains the principles of the Bengal school, and is of paramount authority wherever the doctrines of that school prevail The *Mita'cshara* represents the doctrines of the school of Benares, and although it differs in certain points from the school of Bengal, the difference is not so great as is commonly supposed. These two books are the principal authorities to which English authors, writing on the subjects of which they treat, refer, and although the Digest of JAGANNATHA is more elaborate and professes to contain the opinions of the earlier sages and to expound their meaning, that work has not attained the celebrity either of the *Ji'mu'ta-va'hana* or the *Mita'c-shara,* to which the Court have always given the preference. In Bengal the *Ji'mu'ta-va'hana* is held in the greatest reverence. In the rest of India, except in those parts where the doctrines of the Mit'hila' and Maraha'tta schools prevail, the *Mita'cshara* is equally respected. In fact, the doctrines of the Mit'hila' and Marahātta schools are based on the *Mita'cshara*, which has also influenced the Dravada school. The *Vivadha chintāmani*, the principal authority of the Mit'hila' and the *Mayukha*, the leading work of the Maraha'tta law, have been translated ; but as yet we have no translation of the *Smriti-chandrica*, the foundation of the Dravada law. All we know of this work has hitherto been gethered from the replies of the Pundits whom the Courts were required formerly to

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MITĀCSHARĀ

DÁYA-BHÁGA.

A TREATISE ON INHERITANCE,

BY JÍMÚTA VÁHANA.

CHAPTER I.

Partition of Heritage defined and explained. Two periods of partition of the Father's wealth.

1. Subject proposed.

1. PARTITION of heritage, on the subject of which various controversies have arisen among intelligent persons (not fully comprehending the precepts of MENU and the rest) should be explained for their information. Hear it, O ye wise!

2. Partition of heritage, described by NA'REDA, as a head of actions.

2. First, the term Partition of Heritage (*dáyabhága*) is expounded; and, on that subject, NA'REDA says, "Where a division of

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2. *Division of the estate.*] Partition is an act adapted to ascertain property; as will be subsequently explained. Division of patrimony by sons, or a distribution of which they are the makers, is partition of heritage. The wealth, in regard to which that is especially instituted, or is executed by the persons making it, with one accord, or by the intervention of arbitrators or the like, is denominated by the wise a subject of litigation. Such is the construction of the text. S'RÍCRÍSHN'A.

Or the meaning may be, in a controversy or law-suit wherein partition of patrimony is instituted by sons, the subject of litigation is entitled division of heritage. ACHYUTA.

CHU'DA'MAN'I, and the rest of the commentators on JÍMU'TA-VA'HANA'S treatise, exhibit many variations in the reading and interpretation of the passage here cited from NA'REDA; and have entered into long disquisitions on the different expositions of the text. The principal disagreement is in regard to the relative pronoun.* There is not, however, any essential difference in the results of the various interpretations.

Some, observes S'RÍCRÍSHN'A, interpret the pronoun (*yatra*) in the causative seventh case, making it relate to the term "topic of litigation," and they thus explain the text: 'That subject of controversy, on account of which a 'division of patrimony, or distribution of it by lots, is executed by sons, has 'been termed partition of heritage.'

MAHE'S'WARA, who adopts this interpretation, states the consequent meaning thus: 'that topic of litigation, which consists in the ascertainment of 'property whether effected by arbitrators or by the parties, and, for the sake of 'which ascertainment, a division of patrimony is executed by sons, such as cast'ing of lots or other act separating property, is called by the sages partition of 'heritage.'

Taking the pronoun in the nominative case, either by so reading it, or by the license which justifies anomalies in sacred writings, the passage is by some explained (as is remarked by commentators) 'the division of patrimony, which 'is instituted by sons, is called partition of heritage.'

After noticing the various readings, S'RÍCRÍSHN'A adds, 'certain writers, 'however, expound the term patrimony, in the distributive sixth case. Accord'ingly, the import of the text, consonantly to their opinion, is "the portion of '"the paternal estate, for which a partition is instituted by sons, is division '"of heritage." Agreeably to this interpretation, likewise, the wealth must be 'understood to be the subject of the action.'†

* Most copies and quotations of the text read it *yatra*, "where" or "in which." But some read *yattu*; and others *yastu*; "but which."

† The author of the *Dáya rahasya* gives the preference to this interpretation.

"the paternal estate is instituted by sons, that becomes a "topic of litigation, called by the wise Partition of Herit- "age."*

3. Exposition of his text.

Inheritance includes succession to the goods of any relation.

3. What came from the father is "paternal:" and this signifies property arising from the father's demise. The expressions "paternal" and "by sons" both indicate any relation: for the term "partition of heritage" is used for a division of the goods of any relation by any relatives. Accordingly NA'REDA, having premised "partition of heritage" as a topic of litigation, (§ 2) shows, under that head of actions, the distribution of effects left by the mother and the rest.† So MENU, likewise, premising inheritance,‡ but without employing the word father or any other specific term, propounds the division of effects of any relative.

4. Derivation of *dáya*, heritage, from *dá*, to give.

4. The term "heritage," by derivation, signifies "what is given." However, the use of the verb *(dá)* is here secondary or metaphorical; since the same consequence is produced, namely, that of constituting another's property after annulling the previous right of a person who is dead, or gone into retirement, or the like. But there is no abdication of the deceased and the rest in regard to the goods.

5. Definition of heritage.

5. Therefore, the word "heritage" is used to signify wealth, in which pro-

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4. *Heritage signifies "what is given."*] Since the verb to give signifies the will "be this no longer mine," which has the effect of vesting property in another; and since that cannot exist in the proposed case, therefore it here merely signifies any act which has the effect of vesting property in another, such as the demise of the former owner, his retirement, &c. ACHYUTA.

There is not in this instance a relinquishment on the part of the person deceased, or retired, &c., consisting in the will "be this no longer mine," and operating to annul the former property. RAGH. *Dáyatatwa.*

5. "*Heritage" is used to signify.*] The term heritage signifies by acceptation property vested in a relative, in respect of wealth, in right of relation to its former owner (as son or otherwise), on the extinction of his property. RAGH. *Dáyatatwa.*

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* NA'REDA, 13. 1. † NA'REDA, 13. 2. Vide Infra. C. 4. Sect. 2. § 13. ‡ MENU, 9. 103.

perty, dependent on relation to the former owner, arises on the demise of that owner.*

6. Partition is not a splitting of the chattel; nor the separation of it from the co-heir's goods.

6. Is the partition of heritage a splitting of the divided thing into integrant parts? Or does partition consist in the chattel's not being united with the heritage of a co-heir? The first position is not correct; for the heritage itself would be destroyed. Nor is the second accurate: for, though goods be conjoined, it may be said, "this chattel, which was before parted, is not my "property, but my brother's."

7. Nor a distribution of a general right to particulars.

7. Nor can it be affirmed, that partition is the distribution to particular chattels, of a right vested in all the co-heirs, through the sameness of their relation, over all the goods. For relation, opposed by the co-existent claim of another relative, produces a right (determinable by partition) to portions only of the estate: since it would be burdensome to infer the vesting and divesting of rights to the whole of the paternal estate; and it would be useless, as there would not result a power of aliening at pleasure.

8. Definition of partition.

8. The answer is: Partition consists in manifesting† [or in particularizing‡] by the casting of lots or otherwise, a property which had

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6. *The heritage itself would be destroyed.*] Meaning an inheritance consisting of an individual, as an ox, a slave, or the like. If divided by a distribution of parts, the destruction of it would be the consequence. MAHE'S'WARA.

7. *Nor can it be affirmed.*] The author here censures the doctrine of the *Mitácshara*. RAGH. on the *Dáyabhága*.

He canvasses the opinion of the *Mait'hilas*. MAHE'S'WARA.

8. *Partition consists.*] RAGHUNANDANA, in his *Dáyatatwa*, quoting JÍMU'TAVA'HANA's definition to refute it, has a little varied the terms of it, by blending

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* Or according to another reading of this passage, "on the extinction of his ownership." For in some copies, and in certain quotations of the passage, it is written *tat swámyópgramé*; and several of the commentators appear to have so read it. But MAHE'S'WARA states this as the sense of the phrase, and the other *tat swámyuparamé* as the original text.

† So the term, here employed, is explained by CHU'DA'MAN'I.

‡ ACHYUTA and S'RÍCRĬSHN'A expound the term "making it positive, that a certain thing appertains to a certain individual."

arisen in lands or chattels, but which extended only to a portion of them, and which was previously unascertained, being unfit for exclusive appropriation, because no evidence of any ground of discrimination existed.

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both the explanations proposed by that author (§ 8 and 9). "Some," he says, "allege, that partition, which takes place by reason of the co-existence of other "relatives, [who have an equal right of succession*] is a particular ascer-"tainment of property arisen in lands or chattels, (extending to a part only, "but unfit for special use and appropriation, because grounds of discrimination "are wanting;) by the casting of lots or other means, which determine, that a "particular chattel belongs to a particular person." To this he objects, that "the definition is not accurate: for how may it be certainly known, since no "text declares it, that the lot, for each person, falls precisely on that article "which was already his? Again, if wealth be gained, after the father's demise, "by a brother using one of two horses which belonged to the father, it is uni-"versally acknowledged, that two shares of it appertain to the acquirer; and "one to any other co-heir. In such a case, when the original property is subse-"quently divided, if that very horse be obtained by the acquirer, then, accord-"ing to the opinion of those who affirm partial rights, the horse was already "his; why then should another brother share the wealth gained by him? But, "if the horse be obtained by another co-heir, equal participation of wealth so "acquired would be proper, since it is gained by the personal labour of the one "and by the work of a horse belonging to the other."

Raghunandana then states his own definition, "But, in fact, partition is "a distributive adjustment, by lot or otherwise, of the property of relatives "vested in them, over the whole wealth, in right of the same relation, upon the "extinction of the former owner's property. The vesting and divesting of pro-"perty over the whole estate are inferred, in like manner as the divesting of "partial rights over portions, and vesting of a common right over the whole, "are deduced in the instance of re-union of co-heirs."

S'rícrishn'a, in his commentary on the work of Jímu'ta-va'hana, endeavours to repel Raghunandana's objection. He cites his reasoning nearly in the exact words, and replies, "The objection, which is thus proposed by the learn-"ed author, is not right. For, according to the opinion of those who contend "for the doctrine of partial rights, undivided is the sense of the term "common:† and, since the nature of it is not changed by denying a general "right, the objection, alleged by the opponent, cannot be valid."

After thus endeavouring to vindicate his author, S'rícrishn'a proceeds to state the concurrent opinions of Harina't'ha, Vijnya'ne's'wara, Va'chespati Mis'ra, and others, who maintain, that "partition does annul a previous right

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* So the sentence is supplied by the commentator Ca's'ira'ma Va'chespati, who remarks, that the observation in the text is made, "because no partition would be necessary, were there no other relative."

† As used in texts concerning participation in acquired property. For example, "When a man acquires wealth by valour, relying on any common vehicle or weapon, "the brethren shall be sharers in it." This note is suggested by an equivalent insertion in the passage itself, as quoted by the commentator on the *Dáyatatwa.*

9. Or partition is a special ascertainment of property, or making of it known [by reference of a particular share to a particular person.*]

9. Its literal meaning.

10. Even in the case where a single article, as a female slave, a cow, or the like, is common to many, the property is severed by separate use, in carrying burdens, or in milking, during specific periods, in turn, as

10. The definition holds good in the case even of a single article:

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and become the cause of new property, as inferred "in the instance of partition made by a father:" adding reasons, which are similarly cited by the commentator on the *Dáyatatwa*, with the remark, "that the opinion delivered by Ra-" ghúnandana is conformable to that doctrine." Whence also Jaganná't'ha, in the digest of *Hindu* law, concludes, that "Raghunandana's opinion is indirectly admitted even by S'rícrishn'a."

9. *Or partition is, &c.*] This abridged definition of partition is intended by the author, for a literal interpretation of the term *vibhága*, conformably with its derivative sense; assuming, that the radical verb, *bhaj*, signifies to make known; either "because roots have numerous significations," according to the remark of Achyuta; or "because that import is deducible from the proper "meaning of the verb *bhaj*, to serve or adore," as stated by Mahe's'wara in his note on this passage.

By reference of a particular share to a particular person.] So S'rícrishn'a completes the sentence. He adds "the making of property known, here, sig-" nifies the casting of lots or other operation tending to the ascertainment of "the right."

10. *As directed by* Vrihaspati.] Raghunandana, in the *Dáyatatwa*, citing the same text as propounding a distribution by difference of time, remarks, that 'the rise and extinction of various periodical rights to the same individual, 'must evidently be here admitted: or else a restriction of the general property 'vested in all.'

S'rícrishn'a asks, "If the articles be sold by the possessor during his own "turn, without the consent of the other periodical owners, does not the buyer "obtain the complete property for all the periods?" He replies, "No: such in-"terest only as the vender held, is vested by the purchase in the buyer; and "thus the purchaser, standing in the place of the seller, has the use of the "article in turn with the other proprietors."

"*In the houses of the several co-heirs successively.*"] According to some copies of Raghunandana's *Dáyatatwa*, the reading is "on successive days" *diné diné*, instead of *grihé grihé* "in the houses successively." But the latter is the reading of the passage as cited in other compilations. The whole passage, as it is here quoted by Jímu'ta-va'hana, consists of portions of three different stanzas; which in Vrihaspati's text are remote and in a reversed order; according to the quotation of the text in the *Smriti-Chandricá*, *Calpataru* and *Retnácara*.

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* S'rícrishn'a.

the right to which may be shared as provided by VRĬHASPATI.

directed by VRĬHASPATI. "A single female "slave should be employed on labor in the "houses [of the several co-heirs] successive-"ly, according to the number of shares :—"and water of wells or ponds is drawn for use according "to need [without stint]—such property [as is regularly not "divisible] should be distributed by equitable adjustment; "else it would be useless [to the owners."] These three half stanzas occur in many places, [as quotations from this author;] though not found in their regular order [in his Institutes of Law.*]

11. Partition does not create right.

11. Does it not follow from the text of NA'REDA, ("let "sons regularly divide the wealth when "the father is dead") which authorizes sons to divide their father's effects after his decease,† that sons have not property therein before partition? nor can partition be a cause of property, since that might be misunderstood as extending even to the goods of a stranger.

12. But the demise of a relation is its cause.

12. The answer is this: since it is the practice of people to call an estate their own, immediately after the demise of their father or other predecessor; and the right of property is acknowledged to vest without partition in the case of an only

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11. *Does it not follow, &c.*] Does partition ascertain a pre-existent right? Or does it create the right itself? To both these doctrines objections are here proposed. Sons have not property before partition: for the father's property, suggested by the relative case in the phrase, "their father's effects;" is an obstacle to it. Consequently partition cannot be the ascertainment of a pre-existent right. S'RÍCRĬSHN'A.

Therefore, the property of the father, though deceased, would subsist until partition took place. Such is the import of the objection. Admitting this, and the inference that property arises from partition alone, and that the father's property is thereby divested; what harm ensues? The author replies, "partition cannot be a cause of property." MAHE'S'WARA.

Nor can it extinguish a former right. For it might else be supposed, that, if strangers cast lots for the goods of one with whom they are unconnected, the property of the owner would be thereby annulled, and the right vested in the strangers. S'RÍCRĬSHN'A.

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* S'RÍCRĬSHN'A. † NA'REDA, 13. 2.

son; the demise of the relative is the cause of property. Consequently there is no room for any misconstruction.

13. Acquisition of property by birth;

13. Acquisition is the act of the acquirer; and one, who has the state of ownership dependent on acquisition, is the acquirer. Is not birth, therefore, as the act of the son, rightly deemed his mode of acquisition? and have not sons, consequently, a proprietary right, during their father's life, [even without his being degraded or otherwise disqualified;*] and not by reason of his demise? and, therefore, is it declared "in some cases birth alone [is a mode of acquisi-"tion,†] as in the instance of a paternal estate."

14. Shown to be an erroneous supposition.

14. That is not correct: for it contradicts Menu and the rest. "After the [death of the] father "and the mother, the brethren, being as-"sembled, must divide equally the paternal "estate: for they have not power over it, while their "parents live."‡

15. Menu, (§ 14) denies the son's right in his father's life-time.

15. This text is an answer to the question, why partition among sons is not authorized, while their parents are living: namely "be-"cause they have not ownership at that "time."

16. His text cannot intend mere dependence and control.

16. It should not be argued, that the text intends want of independence, like another passage of the same author, concerning acquisitions by a wife or son:§ for there is no evidence of property then vested; but, in the other instance, dependence is rightly supposed to be meant, since property is suggested by the phrase "what they earn" or acquire.

17. The son's property in his

17. Besides, it would contradict revealed law, if these persons had not owner-

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17. *Besides, it would contradict the revealed law.*] It would contradict those passages of Scripture which prescribe certain fasts and other religious rites to be observed by women. Mahe's'wara.

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* S'rícrishn'a furnishes this clause.

† Supplied on the authority of S'rícrishn'a and other commentators.

‡ Menu, 9. 104. § Menu, 8. 410.

own gains is requisite to his performance of religious rites therewith.

ship even in that which is by them earned; since religious rites, enjoined by holy writ, and which must be effected by means of their own wealth, would be prevented.

18. De'vala denies the son's right in the goods of his father yet living.

18. De'vala, too, expressly denies the right of sons in their father's wealth. "When the "father is deceased, let the sons divide the "father's wealth: for sons have not owner-"ship while the father is alive and free "from defect."

19. No authority declares a right by birth.

19. Besides, if sons had property in their father's wealth, partition would be demandable even against his consent: and there is no proof, that property is vested by birth alone; nor is birth stated in the law as means of acquisition.

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Neither should it be argued, that the religious rites may be accomplished with goods given for the purpose by the husband or father, &c. For, on that supposition, the husband's relinquishment would vest property in his wife. But, in like manner as the right vests in him immediately upon his wife's receipt of anything from another person, so does it vest in him on her receipt of goods from himself. S'rícrishn'a.

18. *Free from defect.*] Raghunandana, in the *Dáyatatwa*, interprets "free from defect," not degraded, and cites Na'reda (13. 3.) "If the father "be lost, or no longer a householder, &c." § 32.

19. *Nor is birth stated in the law as means of acquisition.*] The author apparently alludes to a passage of Gautama cited in the *Mitácshara*, and which expressly declares "by birth alone a man takes ownership of wealth: "so the holy instructors maintain." Accordingly the commentators, Achyuta, and S'rícrishn'a, question the authenticity of the text: and indeed it is not found in Gautama's Institutes. S'rícrishn'a says "the text of Gautama, "which is cited in the *Mitácshara*, is unauthorized; or, if it be authorized, it "relates to the case of one, whose father dies while the child is in the mother's "womb." This commentator adds as a reason, "Else a father, who had male "issue, would not be independent in regard to his own goods." He subjoins an interpretation similar to that which occurs in the *Dáyatatwa* of Raghunandana, where the passage is explained in an entirely different sense upon an altered reading of it: and, after proposing another exposition of it, he concludes thus: "It must be therefore understood to be the implied sense, that, "because the relation of birth is superior to every other, a son, standing in "that relation, has the right of succession to his father's wealth immediately "on the extinction of his father's right."

Raghunandana's interpretation is this. 'The text of Gautama, which is cited in the *Mitácshara*, signifies, "the venerable teachers maintain, that, on

20. Relation of father and son, and demise of the father, are causes of property.

20. In some places it is alleged : but there, by the mention of birth, the relation of father and son, and the demise of the father are mediately indicated as causes of property.

21. A right may accrue to one by the act of another ; as in donation.

21. The right of one may consistently arise from the act of another : for an express passage of law is authority for it ; and that is actually seen in the world, since, in the case of donation, the donee's right to the thing arises from the act of the giver ; namely, from his relinquishment in favor of the donee who is a sentient person.

22. Acceptance of a gift is not the cause of property.

22. Neither is property created by acceptance ; since it would follow, that the accepter was the giver : for gift consists in the effect of raising another's property ; and that effect would here depend on the donee, in like manner as a votary, though making a relinquishment of a thing offered to a deity, is not a sacrificer ; but the priest alone is so denominated, as performing the act of presenting its relinquishment, which act was the purpose of the ceremony termed a sacrifice. Besides the word gift occurs in passages of law as signifying something antecedent to acceptance.

For gift precedes acceptance.

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'" the extinction of the father's property, his son, not any other relative, may
'" take his goods, because sons have a right to the wealth of their natural
'" father by the very relation of birth, by which they are his issue, and which
'" is superior to every other relation." It does not mean, that sons have a
'right by birth in their father's wealth, while his own property in it subsists ;
'for that would contradict the text of DE'VALA.'

20. *In some places.*] That is, in some books, birth is so alleged. An authentic passage of this import, by a worldly writer, does occur. S'RÍCRÍSHN'A.

21. *From relinquishment in favour of a sentient person.*] Since no right of ownership arises from mere relinquishment, such as the letting loose of a young bull [at a funeral,] the author adds the condition " in favor of one who " is a sentient person." S'RÍCRÍSHN'A.

22. *The word gift occurs in passages of law.*] The particular passage of law which is here instanced, and the initial words of which are quoted by the author, is completed, with some variation, by the commentators, ACHYUTA, S'RÍCRÍSHN'A and MAHE'S'WARA. " Intending in his mind a proper object of " his liberality, let the giver pour water on the ground [to ratify his donation.] " The ocean has its bounds ; but a gift has no termination."

23. A doubt proposed. How can the property precede the appropriation?

23. Is not receipt acceptance? for the affix, in the word *swícára,* implies a thing becoming what it before was not; and the act of making his own *(swan curvan)* what before was not his, constitutes appropriation or acceptance *(swícára.)* How then can property be antecedent to that?

24. Answer. Receipt and acceptance are means of acquisition, tho' not creating property, but rendering it disposable.

24. The answer is, though property had already arisen, it is now by the act of the donee, subsequently recognizing it for his own, rendered liable to disposal at pleasure: and such is the meaning of the term 'acceptance' or 'appropriation.' From its association with teaching, and assisting at sacrifices,* receipt *(pratigraha)* is, without question, a mode of acquisition, though it do not immediately create property: for, in the case of assisting at sacrifices and so forth, property in wealth so gained arises solely from the gift of the reward.

25. Survival may constitute the right of succession.

Either that, or demise, must do so.

25. Or the survival of the son, at the time of his father's demise, may constitute his acquisition. Besides, in the case of goods left by a brother or other relative, the property of the rest of the brethren or other heirs, must, however reluctantly, be acknowledged to arise either from his death or from the survival of the rest at the time of his decease.

26. MENU, before cited, declares

26. Hence [that is, because property is not vested in sons, while the father

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23. *The affix implies.*] The affix *Chivi,* which affects the first member of the compound term *Swícára,* bears the import here stated.

26. *Recites partition.*] The recital of partition is intended as an indication of property arising at that period. S'RÍCRÍSHN'A.

By the passage above cited (MENU, 9. 104.) it is not understood, that partition must be made on the death of the father: but it is signified, that property, which authorizes partition, takes effect from his demise. MAHE'S'WARA.

If property be truly vested at that period, then partition at pleasure follows of course.

An explanatory recital is introduced, for greater clearness, where the same result was already obtained from reasoning or authority. CHU'DA'MAN'I.

For a precept teaches only what was not otherwise known. MAHE'S'WARA.

* MENU, 10. 76. and many similar passages, in which these are mentioned, has three modes of earning wealth.

property, on the father's demise, by authorizing partition then.

lives,* or because property is not by birth, but by survival,† or because the demise of the ancestor is a requisite condition,‡] the passage before cited,§ beginning with the words "after "the [death of the] father," being intended to declare property vested at that period, [namely, at the moment of the father's decease||] recites partition which, of course, then awaits the pleasure [of the successor.] For it cannot be a precept, since the same result [respecting the right of partition,¶ at pleasure,**] was already obtained [as the necessary consequence of a right of property.]

27. He neither enjoins partition, nor restricts it to that time.

27. Nor can it be a restrictive injunction. For, as that is contrary to the text of MENU, "Either let them thus live together; or "let them dwell apart for the sake of reli-"gious merit;"†† and as it produces visible consequences *only* [not any unseen or spiritual result,‡‡] it can neither be an injunction for an *immediate* partition, nor a limitation of the time.

28. It would be a limitation to that particular moment:

28. Besides, partition would be admissible, only at the moment immediately following the father's decease and not at any later period; for there is not in this instance, as

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27. *Nor can it be a restrictive injunction.*] If it can be understood as a precept, it should not be taken as an explanatory recital. It may therefore be a restrictive injunction. Apprehending this objection, the author obviates it. S'RÍCRÍSHN'A.

It cannot be an injunction; for MENU, by authorizing their living together, gives a sanction to their omission of partition. MAHE'S'WARA.

Being followed by no spiritual consequences attendant on the performance or on the omission of it, partition cannot be restricted even by a hundred texts. S'RÍCRÍSHN'A.

The option cannot be restricted by a hundred passages. CHU'DA'MAN'I.

28. *Besides partition.*] Supposing it to be a limitation of time intended for spiritual ends; the author proceeds in his reasoning. Time subsequent to the father's decease may be the moment immediately following it, or any time subsequent. On the first interpretation, the author says, Partition would be admissible only at the instant immediately following it. The condition being

* S'RÍCRÍSHN'A and ACHYUTA.
† CHU'DA'MAN'I.
‡ MAHE'S'WARA.
§ MENU, 9. 104. vide Supra. § 14.
|| So all the commentators interpret this passage.
¶ CHU'DA'MAN'I.
** MAHE'S'WARA.
†† MENU, 9. 111. vide Infra. § 37.
‡‡ S'RÍCRÍSHN'A.

Or would be superfluous if taken with greater latitude.

in that of a sacrifice on the birth of a child, an objection analogous to the hazard of the new born infant's life : and partition to be made at any time after the father's demise, while the sons live, and at their pleasure, is already obtained [as a necessary result of obvious reasoning, without need of a special precept for the purpose.*]

29. It cannot intend a prohibition in the father's life-time.

29. Therefore, the text of MENU must be argued [by you† [to intend the prohibiting of partition, although the son's right subsist during the life of the father. But that is not maintainable. For it would thus bear an import not its own.

30. MENU correctly interpreted,

30. Hence the texts of MENU and the rest [as DE'VALA § 18‡] must be taken as

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exclusive, it would be inadmissible at a subsequent period. Might not partition nevertheless take place at a subsequent time, in like manner as the sacrifice directed to be performed when a child is born, and which should accordingly be celebrated immediately after the birth of the infant, is deferred until the period of uncleanness end ? The author replies to that. Since the period of uncleanness begins immediately after the section of the naval string, the sacrifice should be first performed like other rites on the birth. But GÓBHILA directs, that the breast shall be given after the section of the string : and if that be deferred for so long a time, the infant's throat will be parched and his life endangered. On account of this objection, a postponement takes place. But no such objection exists in the present instance.

Taking the second interpretation ; partition after the death of the father is at the pleasure of the successor. Thus, since sons have not right of ownership prior to their father's demise, partition could not be then supposed ; and it follows, even without a precept declaring it, that the time for partition must be subsequent to his decease. The limitation is therefore superfluous. S'RÍCRÍSHN'A.

29. *It would thus bear an import not its own.*] The words " may divide "after the death of the father" would signify, differently from the obvious import of the terms, " may not divide while he lives." S'RÍCRÍSHN'A.

30. *One position is conveyed by the terms, &c.*] One position, namely, the want of right, during the parent's life, is expressed by the terms of the text : it is conveyed by the words " they have not power, &c." The other, namely, ownership after the parent's demise, is the import deducible from the right of partition. S'RÍCRÍSHN'A, &c.

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* S'RÍCRÍSHN'A.

† So S'RÍCRÍSHN'A supplies the text. MAHE'SWARA says, " by you, who aver "property dependent on birth."

‡ RAGHUNANDANA.

denies the right of sons during the life of parents; and affirms it after their demise.

showing, that sons have not a right of ownership in the wealth of the living parents, but in the estates of both when deceased. One position is conveyed by the terms of the text; the other by its import.

31. Demise includes other causes of divestiture of property.

31. Mere demise is not exclusively meant for that intends also the state of a person degraded, gone into retirement, or the like; by reason of the analogy, as occasioning an extinction of property.

32. NA'REDA enumerates several.

32. Accordingly NA'REDA says: "When the mother "is past child-bearing, and the sisters are "married, or if the father be lost, or no "longer an householder, or if his temporal "affections be extinct."*

33. His text explained.

Various readings noticed.

33. "Lost" signifies degraded: "no longer a house-"holder," having quitted the order of a householder.† If the reading be "when "he is exempt from death," then the sense is "when being exempt from death (that "is alive,) he is devoid of affections." The variation in the reading is unfounded.

Annotations.

31. *Gone into retirement or the like.*] The order of a hermit, as well as the extinction of worldly affections, is here comprehended under the term "or the like." S'RÍCRÍSHN'A.

32. *Accordingly* NA'REDA *says.*] For since partition is recited, being here understood from the preceding passage in which it was premised, (NA'REDA, 13. 2.) this indicates the departure of property from the father and the rise of property vested in sons. S'RÍCRÍSHN'A.

33. *Lost signifies degraded, &c.*] RAGHUNANDANA, in the *Dáyatatwa*, copies the first part of this gloss; and adds 'therefore, if the right of property be 'annulled by death or by degradation, or by quitting the order of a house-'holder, sons are entitled to partition; and so they are, even though the right 'of property remain, if the father be devoid of wish for wealth which apper-'tains to him.'

The concluding part of JÍMU'TA-VA'HANA's gloss is construed by MAHE'S'-WARA as censuring the reading which had been just mentioned. But most commentators understand it as an allusion to another not specified. ACHYUTA remarks, that three several variations of the text are exhibited in the *Pracás'a* and other compilations. According to the first *(nivrïtté chá'pi raman'át)*, the meaning is "if he be destitute of virile power." In the two last *(nirapécshé*

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* NA'REDA, 13. 3.

† The commentators notice another reading of this passage: *grïhast'hás'ramás'-aran'é*, 'not preserving the order of a householder;' instead of *grïhast'hás'rama-rahité*, 'without the order of a householder.'

34. By authorizing partition, he declares property to be then vested.

34. Here also, to show, that the son's property in their father's wealth arises from such causes as the extinction of his worldly affections, this one period of partition, known to be at their pleasure, is recited explana-

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Annotations.

chá's'aran'é and *nirasté chápyas'aran'é)* both first terms have the same import with the concluding term. The variation in the reading is groundless, says this author, being wanting in many books.

The reading preferred by JÍMU'TA-VA'HANA, and in which he is followed by RAGHUNANDANA, is *vinashté vápy as'aran'é* "lost, and no householder." The variation, noticed by him in the text, is *nivrïtté vá'pi maran'át,* "exempt from death;" and the authority for it is HELA'YUD'HA, according to a remark of CHAN'D'E'S'WARA in the *Viváda retnácara.*

S'RÍCRÍSHN'A observes, 'when such is the reading of the third verse of the 'stanza, then it is an epithet of "one devoid of affections." The author uses 'the words, "when" and "then" to indicate his disapprobation. The reason 'is, that the epithet is superfluous.' The author's allusion to a reading not specified is referred by this commentator to one of those exhibited in the *Pracás'a,* as before mentioned: viz., *nivrïtté vápiraman'át.*

But the author of a commentary bearing the name of RAGHUNANDANA, considers the author's censure as relative to a term in the text, *nïshprïhé* (devoid of affection) a supposed reading for *vinasht'é* (lost.) This however appears to be a mistake, as is remarked by ACHYUTA, for no such reading occurs.

In the same commentary it is further observed, that, in the *Viváda Chintáman'i,* the text is read *nivrïtté raman'é chá'pi,* (when the sexual passions have ceased.) The remark is true. But that is only a transposition of the common reading *(nivrïtté chá'pi raman'é.)* which occurs in the *Mitácshara* and many other compilations, and which is defended by the author of the *Viramitródaya* against JÍMU'TA-VA'HANA's supposed rejection of it, or of the equivalent reading *(nivrïtté chá'pi raman'at.)*

The author of the *Dáya rahasya* follows the reading ascribed by CHAN'-D'E'S'WARA to HELA'YUDHA, and noticed by JÍMU'TA-VA'HANA. He says 'while 'the father is exempt from death, that is, alive, there are two periods of parti-'tion: one, "when the mother is incapable of bearing issue;" the other, '"when the father is devoid of affections." He quotes JÍMU'TA-VA'HANA's read-'ing of the text and interpretation of it; and proceeds thus: "If the father be '"no householder," that is, if he become an anchoret or ascetic, and "if he be '"devoid of affections," if he do not care for his wealth; if there be a relinquish-'ment on his part through aversion from trouble, though he continue to 'be a householder; then, the father's voluntary relinquishment, his quitting 'the order of a householder, and his degradation from his class, are declared to 'be causes of annulling his property.'

There are other variations in the reading of this important text, which appears unnecessary to notice, as they do not concern JÍMU'TA-VA'HANA's exposition of it.

34. *To show, &c.*] Literally "From showing" *(jnyápanát)*; that is, for the purpose of showing' *(jnyápanáya.)* S'RÍCRÍSHN'A.

torily: for the recital is conformable to the previous knowledge; and the right of ownership suggests that knowledge.

35. Partition may be demanded by any one of the co-heirs.

35. Since any one parcener is proprietor of his own wealth, partition at the choice even of a single person is thence deducible; and concurrence of heirs, suggested as one case of partition, is recited explanatorily in the text "the brethren being assembled, &c."* Else, since assemblage implies many, there could be no distribution between two; for no passage of law expressly propounds a division between two co-heirs.

36. Is not the first born sole heir? as hinted by MENU.

36. Is not the eldest son alone entitled to the estate, on the demise of the co-heirs? and not the rest of the brethren? for MENU says: "The eldest brother may take the patri-"mony entire; and the rest may live "under him, as under their father."† And here eldest intends him who rescues his father from the hell called *Put*;‡ and not the senior survivor. "By the "eldest, as soon as born, a man becomes father of male "issue, and is exonerated from debt to his ancestors; such "a son, therefore, is entitled to take the heritage. That "son alone, on whom he devolves his debt, and through "whom he tastes immortality, was begotten from a sense of

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Annotations.

In the manner before explained; by means of declaring partition. ACHYUTA.

The recital is conformable to the previous knowledge.] How is it a recital of what was known to be at their will; since will is not even mentioned? The author replies, "It is conformable to the previous knowledge." Without will, there is no partition; therefore, by declaring partition, will is suggested. The recital of partition conforms to that. MAHE'S'WARA.

35 *At the choice of a single person.*] At the choice of one out of many. ACHYUTA.

Since he has full power in right of ownership, partition by the choice of one is an inference of reasoning. S'RÍCRISHN'A.

36. *Who rescues his father from the hell* Put.] This is an allusion to a passage of MENU and others.§ Vide Infra C. 11, Sec. I, § 31.

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* MENU, 9. 104. vide Supra. § 14.
† MENU, 9. 105.
‡ Vide Infra. C. 5, § 6, & C. 11, Sec. 1, § 31.
§ MENU, 9. 138. VISHN'U, 15. 43.

"duty: others are considered as begotten from love of plea-
"sure."*

37. Not so: for the right of the eldest [to take charge of the whole] is pronounced dependent on the will of the rest. Thus NA'REDA says: "Let the eldest brother, by consent, sup-"port the rest, like a father; or let a "younger brother, who is capable, do so: "the prosperity of the family depends on "ability."† By consent of all, even the youngest brother, being capable, may support the rest. Primogeniture is not a positive rule. For MENU declares: "Either "let them thus live together, or let them live apart for the "sake of religious merit: since religious duties are multi-"plied apart, separation is, therefore, lawful."‡ By the terms "together or apart," and "for the sake," he shows it optional at their choice.

37. No. But he, or any capable brother, may assume the management with the consent of the rest, as declared by NA'REDA.

MENU authorizes separation of co-heirs.

38. Thus there are two periods of partition: one, when the father's property ceases; the other by his choice, while his right of property endures.

38. Two periods of partition are admitted.

Annotations.

38. *Thus there are two periods of partition.*] Although the annulment of the father's property, by his own relinquishment, must necessarily be admitted, in the instance of partition by his choice; since partition, mentioned by the author, could not else take place; nevertheless two periods are stated by discriminating the cessation of property from the will to divide it. In fact, since it is an easier explanation, the period when the father's right ceased without special intention of investing another with the property, is the only reason of the son's succession to the heritage. There are not two periods of succession: for that would be a troublesome exposition. This mode of interpretation is consonant to CHU'DA'MAN'I's opinion. S'RÍCRÍSHN'A.

The notion entertained by a certain writer, that the only period is when the father's property ceases, must be rejected as absurd. ACHYUTA.

But when the father, for the sake of obviating disputes among his sons, determines their respective allotments, continuing however the exercise of power over them, that is not partition: for his property still subsists, since there has been no relinquishment of it on his part. Therefore, the use of the term partition, in such an instance, is lax and indeterminate. S'RÍCRÍSHN'A.

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* MENU, 9. 106 & 107. Vide Infra. C. 11. Sect. 1, § 32.
† NA'REDA, 13. 5. ‡ MENU, 9. 111.

39. Not three periods; reckoning for one, the time when the ancestor's worldly inclinations cease, his wife being then incapable of bearing more issue.

39. But three periods must not be admitted; one, when a father dies; another, when he is devoid of worldly regards, and the mother's courses have ceased; and a third by his own choice, while the mother continues to be capable of bearing children, and the father still retains temporal affections. For, if the cessation of the mother's courses be joined, as a condition, with the extinction of the father's worldly inclinations, it might be concluded, that partition could not take place among sons, however desirous of it, when the father becomes a hermit (his temporal propensities being extinguished;) since the cessation of the mother's courses cannot yet have happened [while she is still between thirty and forty years of age:*] for the nubile age, as ordained by MENU,† is twelve years for a girl to be married to a man aged thirty, and eight years for one to be espoused by a man aged twenty-four; and the age prescribed for entering into another order is fifty years.

40. Or without that condition.

40. If it be said, the extinction of passions, without any condition annexed to it, marks the period for a division of the father's estate: that is denied; for it might be thence inferred, that partition would not take place, although the

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Annotations.

39. *But three periods must not be admitted.*] The author here opposes the doctrine maintained in the *Mitácshara*; as is remarked by the commentators ACHYUTA, S'RÍCRÍSHN'A, and MAHE'S'WARA.

S'RÍCRÍSHN'A observes on the author's argument: 'Since a damsel, twelve 'years old, being married to a man aged thirty, will be only thirty-two years 'of age when he is fifty; and a girl of eight, being espoused by a man of twenty-'four, will have attained only thirty-four years when her husband reaches 'fifty; it must follow,' says the author, 'that partition could not take place. 'But this reasoning is not accurate: for the postponement of partition is 'admissible, lest sons born after his retirement, if his passions be not extin-'guished, and his wife accompany him to the wilderness under the option allowed 'by the law,‡ should be thus deprived of a maintenance. But, if he retire to 'the wilderness at the later period described by the legislator,|| there is nothing 'to prevent partition at that time, since the cessation of the mother's courses 'must have previously taken place.'

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* S'RÍCRÍSHN'A.
† MENU, 9. 94.
‡ MENU, 6. 3.
|| MENU, 6. 2.

father were a degraded person, if he were not at the same time devoid of temporal regard.

41. Four periods must else be admitted: viz. demise, degradation, disregard of worldly objects, choice.

41. But, if this be pronounced to be another period of partition, then four distinct periods would arise: 1, the demise of the father; 2, his degradation; 3, his disregard of secular objects; 4, his own choice.

42. The son's power of making a partition, in case of the father's incapacity, is an erroneous supposition: contrary to express passages of HA'RI'TA, S'ANC'HA, and LIC'HITA.

42. The alleged power of sons to make a partition, when the father is incapable of business [by reason of extreme age, &c.*] has been asserted through ignorance of express passages of law [to the contrary.] Thus HA'RI'TA says: "While the father lives, sons "have no independent power in regard to "the receipt, expenditure, and bailment of "wealth. But, if he be decayed, remotely "absent, or afflicted with disease, let the "eldest son manage the affairs as he "pleases."† So S'ANC'HA and LIC'HITA explicitly declare: "If the father be incapable, let the eldest manage the "affairs of the family, or, with his consent, a younger "brother conversant with business. Partition of the wealth "does not take place if the father be not desirous of it, "when he is old, or his mental faculties are impaired, or "his body is afflicted with a lasting disease. Let the eldest, "like a father, protect the goods of the rest; for [the sup-"port of] the family is founded on wealth. They are not "independent, while they have their father living, nor "while the mother survives."

43. Which forbid partition in

43. These two passages, forbidding partition when the father is incapable

Annotations.

42. *Thus* HA'RI'TA *says.*] The passages, cited in the text, have been here translated, in conformity to the interpretations of JÍMU'TA-VA'HANA's commentators; they are differently explained by other compilers; and in some places read differently.

43. *And it was by mistake, that it was written.*] It does not clearly appear where JÍMU'TA-VA'HANA found the reading which he here censures. CHU'DA'-

* S'RÍCRĬSHN'A.

† In the *Virádá-retnácara* this is read *Cámadáné*, "if he be prodigal," (or bestow wealth, according to his mere pleasure;) and the *Pracás'a* is cited for the other reading, *Cáman díné* "as he pleases, (or with the father's consent,) if he be decayed (that is, poor)."

such case, and provide for the care of the estate.

An erroneous reading noticed.

of business, or when he labours under a lasting disorder, direct, that the eldest son should superintend the household, or a younger son who is conversant with business. The text last cited, therefore, runs "not if the father desire it not;" and it was by mistake that it was written "if he be incapable of business, par- "tition of the wealth takes place, &c."

44. Two periods are acknowledged: 1st, when the owner's property ceases; 2nd, when he chooses to divide.

44. Therefore two periods only are rightly affirmed: one, when property ceases by the owner's degradation from his tribe, disregard of temporal matters, or actual demise; the other by the choice of the father, while his property still subsists.

45. The restriction concerning

45. The condition "when the mo- "ther is past child-bearing,"* regards

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Annotations.

MAN'I, ÁCHYUTA, and S'RÍCRISHN'A, understand the erroneous reading to have consisted in the substitution of one phrase for the other *(cáryácshamé pitari* instead of *na twacámé pitari.)* But MAHE'S'WARA supposes the error to have consisted in the interpolation of the erroneous passage, including the words 'partition of the wealth.' According to him the text means "not if the father "desire not, when he is old, &c." *(na twacámé pitari)* and the words "partition "of wealth if he be incapable of business" *(cáryáchamé pitari ríct'ha-vibhágah)* are an interpolation which is here condemned. Neither of these variations occur in the text, as cited by the authors of the *Calpataru*, *Retnácara* and *Víramitródaya;* who all agree with JÍMU'TA-VA'HANA in the reading of this passage. But a different text is quoted from S'ANC'HA in the *Mitácshara*, *Smritichandricá*, *Chintáman'i*, *Mayúc'ha*, and *Víramitródaya;*† and its import is the reverse of the one above cited. "Partition of wealth takes place, though "the father be not desirous of it, if he be old, or his mind be perverted, or his "body be afflicted with a lasting disease." The author of a commentary on the *Dáya-bhága*, to which RAGHUNANDANA's name is affixed, supposes that to be the reading to which JÍMU'TA-VA'HANA here alludes; censuring it as an erroneous quotation in the *Mitácshara*.

45. *When the mother is past child-bearing.*] Mother here denotes generally any wife of the father. S'RÍCRISHN'A.

Since the condition is stated by way of illustration, it intends generally the impossibility of further male issue. If therefore it be possible, that the father should have issue by another wife, partition should not be made. ACHYUTA.

Even then, when the father's wife is incapable of bearing issue, partition is by the father's choice. S'RÍCRISHN'A.

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* NA'REDA, 13. 3.

† It is ascribed to HA'RI'TA, instead of S'ANC'HA, by the compiler of the *Vyavahára-Mayúc'ha*.

the father's wife being incapable of child-bearing regards the patrimony.

wealth inherited from the paternal grand father. Since other children cannot be borne by her, when her courses have ceased, partition among sons may then take place: still, however, by the choice of the father. But, if the hereditary estate were divided, while she continued to be capable of bearing children, those, born subsequently, would be deprived of subsistence. Neither would that be right: for a text expresses, "They who are born, and they "who are yet unbegotten, and they who are actually in the "womb, all require the means of support: and the dis-"sipation of their hereditary maintenance is censured."*

46. Passages of the law intimate one period of partition when property ceases; and another, by the choice of the owner.

46. It is because there are two periods of partition, in the case of the father's wealth, that MENU, GAUTAMA, and others, avoid the word "dead," and use the term "after."† Since the father's right then ceases, the term "after" is employed to express that sense. Hence this is one period of partition. Another, regulated by his choice, while he does retain worldly affections, is indicated by the text "a son born after "the division, &c."‡

47. The restriction concerning the marriage of sisters inculcates the obligation of disposing of them in marriage, like an injunction concerning debts of the father.

47. The condition "and when the sisters are married"‖ does not intend a distinct period, but inculcates the necessity of disposing of them in marriage: as the text of NA'REDA, "What remains of the paternal inheritance "over and above the father's obligations "and after payment of his debts, may be "divided by the brethren; so that their "father continue not a debtor;"§ is intended to inculcate the obligation of paying the father's debts, not to regulate the time of partition.

Annotations.

46. *This is one period of partition.*] The period when property ceases, is one of the periods of partition. The other, different from the cessation of property, is the moment of the father's choice. S'RICRISHN'A.

It is the moment of his will to divide his property. ACHYUTA.

47. *Over and above the father's obligation.*] Or sums, of which payment had been promised by him. ACHYUTA.

* VYA'SA. The close of this passage is read otherwise in the *Mitácshara*, *Smrĭti-sára*, *Pracás'a*, *Chintáman'i*, &c., viz., "No gift or sale should be made." RAGHUNANDANA in the *Dáyatatwa*, S'RICRISHN'A, and VIDYA'VA'CHESPATI in the *Dáyarahasya*, copy JI'MU'TA-VA'HANA's reading of the passage.

† MENU, 9. 104. GAUTAMA, 28. 1. ‡ MENU, 9. 216. NA'REDA, 13. 43.

‖ NA'REDA, 13. 3. § NA'REDA, 3. 32.

48. For the father's debts must be discharged, or be apportioned on the co-heirs; before partition of his wealth. And the mother's debts, before her goods are divided; as YA'JNYAWALCYA directs.

48. From that text of NA'REDA, it results, that co-heirs, making a partition, may apportion the debts of their father or other predecessor, with the consent of the creditors, or must immediately discharge the debts. For such is the purpose of ordaining a partition of the residue after payment of debts. Accordingly YA'JNYAWALCYA propounds the distribution of a mother's wealth, remaining over and above her debts. "Daughters share the residue of their mother's property, "after payment of her debts: and the male issue, in default "of daughters."* This will be fully considered under the head of debt.†

49. The restriction concerning daughters may regard the succession to their mother's goods.

49. Or the restriction may signify, that the mother's effects should be shared by the sons, if their sisters have been given in marriage: but, if they be unmarried, the inheritance is held in common with them. This will be explained in due time.‡

50. Conclusion. The periods for dividing the father's possessions are two.

50. It is thus established [by reasoning, as well as by positive law,§] that two periods exist for the partition of wealth appertaining to a father [whether acquired by himself or inherited from ancestors.¶]

Annotations.

49. *The mother's effects.*] Other than such as were received by her at her marriage: for it will be shown, that the son's right of succession to such goods is subsequent to the daughter's son. S'RÍCRÍSHN'A.

50. *It is thus established, &c.*] When partition is made by the father, his choice only is requisite, if the estate were acquired by himself; but if it be an estate inherited from ancestors, his will, joined with the circumstance of the mother being past child-bearing, is required. S'RÍCRÍSHN'A, *Dáyacrama*.

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* YA'JNYAWALCYA. 2. 118. Vide Infra. C. 3. § 4.

† The author refers to his treatise on debt, which is not extant; if indeed it were ever completed.

‡ See chapter 4.

§ S'RÍCRÍSHN'A.

¶ MAHE'S'WARA.

CHAPTER II.

Partition made by a Father,—of property ancestral,—and of his own acquisitions.

1. VRĬHASPATI authorizes partition when parents are dead, or when no more issue may be expected.

1. IN the next place, the period for the distribution of an estate left by a paternal grandfather or other ancestor, is propounded. On that subject VRĬHASPATI says, "On the demise "of both parents, participation among bro- "thers is allowed: and even while they "are both living, it is right if the mother be past child- "bearing."*

2. This relates to property ancestral.

For the restriction concerning the wife being passed child-bearing regards that.

2. This passage does not relate to the father's wealth; for the text, concerning the exclusive right of a son born after partition,† would be without relevancy: since there can be no son born when the woman is past child-bearing. Nor can it be supposed to relate to the mother's goods: for she would thus

Annotations.

1. *If the mother be past child-bearing.*] The word mother intends a step-mother also: for there is an equal possibility of her bearing other sons. From the mention of the mother's being past child-bearing, it appears, that the text relates to the grandfather's estate, not the father's: for the succession of a son born after partition is in this case provided for. RAGH. *Dáyatatwa.*

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* Vide Infra. C. 3. § 1. † MENU, 9. 216. NA'REDA, 13. 44.

be stript of her wealth. The condition, that she be past child-bearing, must then relate to the estate of the grandfather or other ancestor.

3. It is no reason of partition, independently of the owner's choice.

3. Neither can the circumstance of her being past child-bearing, be a cause of partition, independently of choice: for there can be no partition without a will to make it.

4. Partition is by the father's choice: as intimated by GAUTAMA.

4. If it be asked, 'admitting a choice, whose must it be?' The answer is, 'the father's;' as deduced from the text of GAUTAMA: "After the "[demise of the] father, let sons share his "estate. Or while he lives, if the mother "be past child-bearing, and he desire partition."*

5. One period of partition is after the death of both parents.

It should not be made while the mother is living.

5. Hence [since such is the import of VRĬHASPATI'S text†] the decease of both parents is one period [for the partition of the grandfather's estate:‡] and since "parents" are here exhibited in the dual number, a division of the father's estate, among brothers of the whole blood, ought [in strictness§] to be made only after the decease of the mother.

6. This does not relate to her separate property.

6. The mention of the mother's demise, does not here imply partition of her goods: since the phrase "even while they are both living" cannot relate to the mother's separate property. It must be understood as relating to the property of another person; for the legality of partition in the instance of survival is there propounded, (as appears from the word even,) in the same case, in which the demise of both parents was declared a reason of distribution. The death of the mother must not be expounded as relative to her goods. This subject will be fully considered in its place.¶

7. One period as above. The other by the choice of the father, provided the mother be past child-bearing.

7. Therefore the death of both parents is one period for partition of an estate inherited from a grandfather or other ancestor, and the other is by the choice of the father when the mother is past child-bearing.

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* GAUTAMA, 28. 1—2 † S'RÍCRĬSHN'A. ‡ S'RÍCRĬSHN'A.
§ MAHE'S'WARA supplies this limitation of the text. ¶ Chapter 4.

8. But not without his consent: as appears from many passages of MENU, &c.

8. A division of it does not take place without the father's choice: since MENU, NA'REDA, GAUTAMA, BAUD'HA'YANA, S'ANC'HA and LIC'HITA, and others, (in the following passages, "they have not power over it,"* "they have not ownership while their "father is alive and free from defect,"† "while he lives, if "he desire partition,"‡ "partition of heritage by consent of "the father,"|| "partition of the estate being authorized "while the father is living," &c.¶) declare without restriction, that sons have not a right to any part of the estate, while the father is living, and that partition awaits his choice: for these texts, declaratory of a want of power, and requiring the father's consent, must relate also to property ancestral; since the same authors have not separately propounded a distinct period for the division of an estate inherited from an ancestor.

9. A text of YA'JNYAWALCYA concerning the equal right of father and son, cited and explained.

9. The text of YA'JNYAWALCYA ("The ownership of "father and son is the same in land which "was acquired by his father, or in a cor- "rody, or in chattels,"§) properly signifies, as rightly explained by the learned UDYO'TA, that, 'when one of two brothers, whose 'father is living, and who have not received

Annotations.

9. *The learned* UDYO'TA.] It is not agreed, who is the author here cited by JÍMU'TA-VA'HANA. The commentator CHU'DA'MAN'I says, 'some author or 'compiler so named.' MAHE'S'WARA retains the name exhibited in the text and calls him UDYO'TA. But S'RÍCRISHN'A hints, that his appellation is DIVA'CARA. While ACHYUTA interprets the phrase as commendatory of an unnamed writer: and RAGHUNANDANA, or the commentator who has assumed his designation, intimates, that the author himself has here delivered his own doctrine. UDYO'TA is again mentioned in another place. Vide C. 11, Sect. 6, § 32.

The text of YA'JNYAWALCYA is thus expounded in RAGHUNANDANA'S treatise entitled *Dáyatatwa*. 'In regard to the land, a corrody, or slaves, though ac- 'quired by the grandfather; as the father has the property of them, in right 'of his being the person who presents a funeral oblation at solemn obsequies, 'so, if his property cease by death or other cause, his sons have a right, though 'their uncle survive, to so much as should have been their father's share.'

* MENU, 9. 104, Vide § 14. † Cited as from NA'REDA, but is part of a passage of [DE'VALA
‡ GAUTAMA, 28. 2.
|| BAUD'HA'YANA. ¶ S'ANC'HA, and LIC'HITA. § YA'JNYAWALCYA, 2. 122.

'allotments, dies leaving a son; and the other survives; 'and the father afterwards deceases; the 'text, declaratory of similar ownership, is 'intended to obviate the conclusion, that 'the surviving son alone obtains his estate, 'because he is next of kin. As the father 'has ownership in the grandfather's estate: so have his 'sons, if he be dead. There is not in that case, any distinc- 'tion founded on greater or less propinquity; for both 'equally confer a benefit by offering a funeral oblation of 'food, as enjoined at solemn obsequies.' Such is the author's meaning.

A grandson, whose father is dead, shares with his uncle the grandfather's estate.

10. And a great grandson, whose father and grandfather are dead, shares the great grandfather's property.

10. Accordingly a great grandson, whose father [as well as grandfather*] is deceased, is in like manner an equal claimant with the son and grandson. For he likewise presents a funeral oblation.

11. If the text be otherwise explained, grandsons, whose father is living, would participate with their father and uncle.

11. But, if sons had ownership, during the life of their father, in their grandfather's estate, then, should a division be made between two brothers one of whom has male issue and the other has none, the children of that one would participate, since [according to your opinion†] they have equally ownership.

12. The former interpretation agrees with the context.

12. It should not be objected that such cannot be the meaning of the text, as not being the subject premised: for the case of grandsons by different fathers, was the proposed subject.

13. Corrody, mentioned in the preceding text, explained.

13. A "corrody" (§ 9) signifies what is fixed by a promise in this form, "I will give that in every month of *Carticá*."

Annotations.

12. *Was the proposed subject.*] It was the subject of the preceding passage in YA'JNYAWALCYA's text.‡

13. *A corrody.*] The author explains corrody *(niband'ha)* as signifying any thing which has been promised, deliverable annually, or monthly, or at any other fixed periods. S'RÍCRÏSHN'A.

RAGHUNANDANA, in the *Dáyatatwa*, cites from the *Calpataru* this definition, "A fixed amount granted by the king or other authority, receivable "from a mine or similar fund."

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* MAHE'S'WARA. † S'RÍCRÏSHN'A. ‡ YA'JNYAWALCYA. 2. 121.

14. Chattels intend slaves.

14. "Chattels."] From their association with land, slaves must be here meant.

15. Or the text may be understood as forbidding the unequal division of property ancestral.

15. Or the meaning of the text (§9) may be, as set forth by DHA'RE'S'WARA, 'A father, occupied in giving allotments at his pleasure, 'has equal ownership with his sons in the 'paternal grandfather's estate. He is not 'privileged to make an unequal distribution 'of it, at his choice, as he is in regard to his own acquired 'wealth.'

16. That agrees with a passage of VISHN'U.

16. So VISHN'U says, "When a father separates his "sons from himself, his will regulates the "division of his own acquired wealth. "But, in the estate inherited from the "grandfather, the ownership of father and son is equal."*

17. The father may distribute his own acquisitions as he pleases, but not the patrimony.

17. This is very clear. When the father separates his sons from himself, he may, by his own choice, give them greater or less allotments, if the wealth were acquired by himself: but not so, if it were property inherited from the grandfather; because they have an equal right to it. The father has not in such case an unlimited discretion.

18. The doctrine of the *Mitácshara*, &c., concerning equal participation of father and

18. Hence [since the text becomes pertinent by taking it in the sense above stated;† or because there is ownership restricted by law in respect of shares, and not an unlimited discretion;‡] both opinions, that the mention of like ownership provides for an equal divi-

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Annotations.

14. *Slaves must be meant.*] Immovables and bipeds are mentioned together in a subsequent text. From that association, it is inferred, that the term chattel here intends biped or slave. CHU'DA'MAN'I.

For if the term intend substance in general, the mention of land and corrody, and the specific notice of chattels, would be superfluous. ACHYUTA.

15. *As in regard to his acquired wealth.*] He may not in this case, as in the distribution of his own property, (for there he had the option,) give unequal shares to his sons. *Dáyatatwa.*

18. *Both opinions ought to be rejected.*] The opinions, here rejected, are those of the author of the *Mitácshara* and others. S'RÍCRÍSHN'A and ACHYUTA.

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* VISHN'U, 17. 1—2. Vide Infra. § 55 and § 76.

† S'RÍCRÍSHN'A and ACHYUTA. ‡ MAHE'S'WARA.

son, and the right of the latter to require partition, is rejected.

sion between father and son in the case of property ancestral, and that it establishes the son's right to require partition, ought to be rejected.

19. Other texts similarly forbid an equal division.

19. Other texts should be explained in the very same manner.

20. The father takes a double share as usual; and the partition is by his choice.

20. It is consequently true, [since the texts above cited do not imply co-ordinate ownership,*] that the father has his double share of wealth inherited from the grandfather or other ancestor; and that a distribution takes place at the will of the father only, and not by the choice of his sons.

21. A passage of MENU and VISHN'U, exempting from partition the patrimony recovered by the father, unless by his free will, does not authorize the sons to demand partition of other patrimony against his will.

21. "If the father recover paternal wealth [seized by "strangers, and†] not recovered [by other "sharers,‡ nor by his own father,||] he shall "not, unless willing, share it with his sons: "for in fact it was acquired by him."¶ In this passage, MENU and VISHN'U, declaring that he shall not, unless willing, share it, because it was acquired by himself, seem thereby to intimate a partition among sons even against the father's will, in the case of

Annotations.

19. *Other texts.*] A text of VRÍHASPATI, concerning the equal power of father and son over property movable or immovable, acquired by the grandfather, is here alluded to. MAHE'S'WARA.

Such text must be interpreted as forbidding an equal distribution of the grandfather's property, among the grandsons, by their father. S'RÍCRÍSHN'A.

20. *Has his double share.*] It is true, that he has two shares, since passages, which will be hereafter cited, authorize him to reserve a double allotment when partition is made in his life-time. S'RÍCRÍSHN'A, CHU'DA'MAN'I, and ACHYUTA.

At the will of the father.] By the text of GAUTAMA before cited (§ 4), partition depends on the father's choice. S'RÍCRÍSHN'A, &c.

21. *And not according to his own pleasure.*] Not according to his mere will: but as choice governed by dread of sin inclines. Thus it must be understood, that, if they be able to subsist by other means, there is no offence in his giving them no share of land or similar property recovered by him. For it is the unequal distribution of patrimony not so retrieved, that is prohibited. S'RÍCRÍSHN'A

* ACHYUTA. † S'RÍCRÍSHN'A. ‡ S'RÍCRÍSHN'A and ACHYUTA. || MAHE'S'WARA. ¶ MENU, 9. 209.

hereditary wealth not acquired [that is, recovered,] by him. But here also, the meaning is, that a father, setting about a partition, need not distribute the grandfather's wealth, which he retrieved : but must so distribute the rest of it, and not according to his own pleasure. Those authors do not thereby indicate partition at the choice of sons.

22. Movables, though inherited, may be unequally divided at pleasure, like new-acquisitions. So YA'JNYAWALCYA.

22. The father has ownership in gems, pearls, and other movables, though inherited from the grandfather, and not recovered by him, just as in his own acquisitions ; and has power to distribute them unequally, as YA'JNYAWALCYA intimates, "The father is master of the "gems, pearls, and corals, and of all [other "movable property :] but neither the father, nor the "grandfāther, is so of the whole immovable estate."*

23. His text expounded.

23. Since the grandfather is here mentioned, the text must relate to his effects. By again saying "all" after specifying "gems, pearls, &c.," it is shown, that the father has authority to make a gift or any similar disposition of all effects, other than land, &c., but not of immovables, a corrody and chattels [*i. e.*, slaves.] Since here also it is said "the whole," this prohibition forbids the gift or other alienation of the whole, because [immovables and similar possessions are†] means of supporting the family. For the maintenance of the family is an indispensable obligation ;

MENU inculcates the duty of maintaining the family.

as MENU positively declares, "The support "of persons who should be maintained is "the approved means of attaining heaven. "But hell is the man's portion if they suffer. Therefore "[let a master of a family] carefully maintain them."‡

Annotations.

By again saying "all."] The separate use of the term "all" must be meant to suggest gold and other movables. For it cannot be an epithet of gems, &c., since it does not agree in number. S'RÍCRISHN'A.

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* Cited also as a passage of YA'JNYAWALCYA by S'RÍCRISHN'A, in the *Dáyacrama*, and RAGHUNANDANA in the *Dáyatatwa*. But the quotation in the *Mitácshara*, (whence it has been evidently taken,) is anonymous.

† S'RÍCRISHN'A. ‡ Not found in MENU's Institutes.

24. A small part of the immovables may be aliened, though the gift of the whole be forbidden.

24. The prohibition is not against a donation or other transfer of a small part not incompatible with the support of the family. For the insertion of the word "whole" would be unmeaning [if the gift of even a small part were forbidden.*]

25. The prohibition regards land, pensions, and slaves.

25. From the express mention of immovables, a prohibition is inferred by the analogy exemplified in the loaf and staff, against the gift or other transfer of a corrody or of slaves.

26. But, if necessary, the whole may be sold.

26. But, if the family cannot be supported without selling the whole immovable and other property, even the whole may be sold or otherwise disposed of: as appears from the obvious sense of the passage; and because it is directed, that a man should by all means preserve himself.

Annotations.

25. *The loaf and staff.*] This example of analogy, to which frequent allusion is made in argumentative writings, is variously stated. According to one explanation, the reasoning, exemplified by it, is analogy drawn from association. According to another, it is an argument *a fortiori*. A loaf having been left suspended on a staff, the loaf is missing and the staff is observed to have been gnawed by rats: it is concluded, that the loaf has been devoured by them. A staff being thrust through loaves, these are necessarily brought by bringing the staff. Other explanations are given: but the result is similar. S'RÍCRÍSHN'A, MAHE'S'WARA, &c. Also RAGH. *Dáyatatwa.* Vide Infra. C. 3. § 15. in notis.

A prohibition is inferred.] The prohibition extends to a corrody and slaves, because they are exhibited in conjunction with land. (YA'JNYAWALCYA. 2. 122). MAHE'S'WARA.

Because the three are yoked together. S'RÍCRÍSHN'A.

26. *As appears from the obvious sense, &c.*] For the obvious sense of the passage inculcates the obligation of maintaining the family.

In like manner, if there be no land or other permanent property, but only jewels or similar valuables, he is not authorized to expend the whole: for the reason holds equally. But the declaration of a power over movables supposes the existence of both sorts of property. It should be so understood. S'RÍCRÍSHN'A.

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* S'RÍCRÍSHN'A.

27. Texts of VYA'SA cited. They do not disable the owner from aliening his property.

27. It should not be alleged, that by the texts of VYA'SA ("A single parcener may not, without consent of the rest, make a sale or gift of the whole immovable estate, nor of what is common to the family." "Separated kinsmen, as those who are unseparated, are equal in respect of immovables: for one has not power over the whole, to give, mortgage, or sell it,"*) one person has not power to make a sale or other transfer of

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Annotations.

27. *It should not be alleged, &c.*] To refute CHAN'DE'S'WARA's doctrine, that gift without the consent of co-heirs, is invalid; and that such gift, though actually made, must be set aside, as the mere semblance of donation; the author states it by way of objection. S'RÍCRĬSHN'A and ACHYUTA on *Dáya-bhága*. CA'S'IRA'MA on *Dáyatatwa*.

The author here imagines an objection to the opinion which he himself entertains, that a gift or other alienation made by an unseparated brother, or co-heir, is valid like a transfer made by a father. RAGH. on the *Dáya-bhága*.

In fact, the requiring of the assent of co-heirs in the case of separated brethren, is for the purpose of ascertaining the fact of partition and settling the limits, like the consent of townsmen and neighbours. Therefore the transfer is valid without the concurrence of a separated co-heir: as has been shown in the *Mitácshara*. RAGH. *Dáyatatwa*.

On the question whether goods held in common may or may not be aliened by one of the parceners, some maintain, that joint property may not be given away by one parcener, because joint or common property is mentioned in a text of MENU† among things not fit to be given. It is accordingly declared by two passages of VYA'SA,‡ that a single parcener has not power to make a gift or other alienation. The notion of these writers is, that a sale or other transfer made by the will of a single parcener, is invalid, because all have property in the whole wealth; for they maintain a common right to the whole, vested in all. That is wrong: for a common property vested in all is denied by the author of the *Dáya-bhága*, because there is no proof of it. S'RÍCRĬSHN'A, *Dáya-crama*.

Separated kinsmen.] This is according to the reading in the *Mitácshara*, *Dáya-bhága*, *Dáyatatwa*, *Viramitródaya*, &c. But in the *Smrĭtichandricá*, *Párijáta*, *Calpataru*, *Retnácara*, *Chintámaní*, &c., the reading is *Dáyadáh* "heirs," instead of *Sapin'dáh*, "kinsmen." However, CHAN'D'E'S'WARA remarks that "heir" here signifies son, &c. And the term is so explained by the author of the *Pracás'a*.

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* Both stanzas are here ascribed by JÍMU'TA-VA'HANA (and similarly by S'RÍCRĬSHN'A) to VYA'SA; but the second is cited in the *Retnácara* as a passage of VRĬHASPATI.

† The passage here cited is not found in MENU's Institutes, and is quoted by most compilers from VRĬHASPATI. The author of the *Viváda-Chandra* has silently introduced into it, a reading, which, if genuine, would make it confirm the contrary doctrine. For, as read by him, the passage in question enumerates void gifts.

‡ Cited in the text.

such property. For here also [in the very instance of land held in common,*] as in the case of other goods, there equally exists a property consisting in the power of disposal at pleasure.

28. They show a moral offence.

But do not invalidate the transfer.

28. But the texts of VYA'SA (§ 27,) exhibiting a prohibition, are intended to show a moral offence: since the family is distressed by a sale, gift, or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer.

29. Other passages must be similarly explained.

29. So likewise other texts (as this, "Though im-"movables or bipeds have been acquired "by a man himself, a gift or sale of them "*should* not *be made* by him, unless con-"vening all the sons,") must be interpreted in the same manner. For here the words "should" "be made" must necessarily be understood.

30. The precept is infringed, but the transfer is not null.

30. Therefore, since it is denied, that a gift or sale should be made, the precept is infringed by making one. But the gift or transfer is not null: for a fact cannot be altered by a hundred texts.

Annotations.

28. *Not to invalidate the sale.*] Since there is not a general property of the whole, a community of rights, consisting in there being numerous owners to the same thing, does not exist: and community signifies only the state of not being separated. But here it is the notion of the author of the *Dáya-bhága*, who maintains a several right to a part vested in each person, that nothing prevents a donation or other transfer of the co-parcener's own share, even before partition, since a common property is already vested in him. S'RÍCRÍSHN'A, *Dáyacrama*.

29. *Must be understood.*] It should not be asked why may not the words understood be "is" "valid" or "is" "possible"? Were it so, the verb could not be governed by the same term with the participle ("convening.") S'RÍCRÍSHN'A, on *Dáya-bhága*.

30. *A fact cannot be alterd by a hundred texts.*] If a *Bráhman'a* be slain, the precept "slay not a *Bráhman'a*," does not annul the murder: nor does it render the killing of a *Bráhman'a* impossible. What then? It declares the sin. RAGH., on *Dáya-bhága*.

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* S'RÍCRÍSHN'A, *Dáyacrama*.

31. This inference is corroborated by a passage of NA'REDA.

31. Accordingly [since there is not in such case a nullity of gift or alienation.*] NA'REDA says: "When there are many persons "sprung from one man, who have duties "apart, and transactions apart, and are "separate in business, and character, if they be not accord-"ant in affairs, should they give or sell their own shares, "they do all that as they please, for they are masters of "their own wealth."†

Annotations

31. NA'REDA *says.*] The passage of NA'REDA's Institutes, here cited, is otherwise interpreted by different compilers; and is generally understood as declaring the separate and independent right of co-heirs, who have made a partition. It is so expounded in the *Smrĭtichandricá, Retnácara, Chintáman'i, Víramitródaya,* &c. But, in the present quotation, it is apparently understood as relating equally to divided and undivided shares.

The author of the *Víramitródaya*, giving a summary of this doctrine, says. 'JÍMU'TA-VA'HANA, having cited two passages of VYA'SA (§ 27.) affirms, that 'they are not intended to incapacitate a single co-heir for making a sale or gift; 'since he has property defined to be a power of disposal at pleasure, in the 'case of immovables, precisely as in that of other effects; and since those 'texts cannot declare null an actual gift consisting in the relinquishment of 'the property; for the fact cannot be altered by a hundred texts. But the pro-'hibition is levelled against wicked persons, and is intended to declare the 'alienation sinful, because it is injurious to the family, if there were no suffi-'cient cause for the alienation, such as the distress of the family or the like. 'So the texts (§ 29) relative to separated co-heirs must be explained as above. 'Accordingly NA'REDA authorizes generally a sale or any other alienation (§ 31). 'Since the text specifies the reason, "because they are masters of their own '"wealth," it relates to immovables; for it would else be impertinent.

S'RÍCRĬSHN'A and ACHYUTA on the *Dáya-bhága* of JÍMU'TA-VA'HANA, and CA'S'I-RA'MA on the *Dáyatatwa* of RAGHUNANDANA, remark on NA'REDA's text (13. 43.) 'This relates to gift or alienation by a well disposed man. But the prohibition 'was relative to an ill-disposed person. [Consequently there is no contradiction.‡] 'It is here expressly declared, that the gift or alienation is valid without con-'sent of heirs. And thus the prohibition of gift or sale of the whole estate, 'unless in distress, must be understood as especially regarding immovables '(land, &c.) rather than chattels (gems, pearls, coral, &c.) But, if this relate to 'a man's own acquisitions, the preceding text (§ 22) would be impertinent. [For 'he had of course power over them, since they were acquired by himself.¶']

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* S'RÍCRĬSHN'A and ACHYUTA.

† NA'REDA, 13. 42—43. Several variations occur in the reading of this passage: particularly in the third and fourth verses of the first stanza; as *Samyac*, well, for *Prĭt'hac*, apart; and *Crĭt'yéshu* for *Cáryéshu*.

‡ ACHYUTA. ¶ CA'S'IRA'MA on *Dáyatatwa*.

32. Recapitulation. The text, (§ 9) has been rightly expounded.

32. We resume the subject. Thus, for the reasons before stated, since the equal participation of father and son in the estate of the grandfather or other ancestor would be incongruous;* and since it cannot be intended by the text (§ 9) to confer on sons a right to demand partition; that text must either be meant to prevent an unequal distribution depending solely on the father's pleasure, [according to DHA'RE'S'WARA's interpretation; § 15†] or it must intend the equal right of a nephew whose father is deceased, to share with his uncle; [conformably with the other exposition. § 9‡.]

33. Partition is by the choice of the father.

When the mother is past child-bearing; if the estate be hereditary.

Or after the father's demise.

33. Thus [since sons have not power to require partition§] a division even of wealth inherited from the grandfather must be made by the sole choice of the father. But, with this difference, that it is requisite, the mother should have ceased to be capable of bearing issue: whereas, in the instance of his own acquired property, partition takes effect without that condition. But, after the demise of the father, it takes place equally in the case of both sorts of property [the father's estate or the grandfather's||] without distinction.

34. The periods of partition are two.

34. Therefore the periods of partition are two, even in the case of wealth inherited from ancestors.

Annotations.

32. *We resume the subject.*] That sons have not a right to participate equally with the father in the grandfather's estate, and that partition is not exigible at the will of grandsons, are positions which constituted the subject under consideration. CHU'DA'MAN'I and S'RI'CRI'SHN'A.

Partition of the estate of a paternal grandfather or other ancestor, was the subject. ACHYUTA.

Since equal participation would be incongruous.] For a reason which will be subsequently stated. S'RI'CRI'SHN'A.

For it is provided by positive institute¶ (§ 35) that the father shall have two shares of such property. MAHE'S'WARA.

Since it cannot be intended, &c.] For the reasons beforementioned. S'RI'CRI'SHN'A.

34. *The periods are two.*] The cessation of the father's property, by death

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* MAHE'S'WARA reads 'since the ordaining of equal participation, &c., would be 'incongruous:' inserting the word *Vid'hána*, which is omitted by S'RI'CRI'SHN'A in his reading of this passage.

† MAHE'S'WARA. ‡ Conformably with UDYO'TA's exposition. MAHE'S'WARA.

§ S'RI'CRI'SHN'A. || CHU'DA'MAN'I. ¶ NA'REDA, 13. 12.

35: The father takes a double share of the patrimony; as ordained by VRĬHASPATI and NA'REDA.

35. In such case, if the father voluntarily make a partition with his sons, he may reserve for himself a double share of property ancestral. For VRĬHASPATI, saying "The father "may himself take two shares at a partition made in his life-time;" and NA'REDA,* "Let the father, making a partition, reserve two shares for "himself;" do so ordain, without restriction.

36. This is confirmed by analogy.

36. Besides, a double share of the grandfather's wealth is the father's due by this [following†] argument.

37. For an elder brother takes two shares; as directed by MENU,

37. Deductions of a twentieth part (with the best of all the chattels,) and of half a twentieth, and of a quarter thereof, are propounded by a passage of MENU: ("The portion "deducted for the eldest is the twentieth "part of the heritage, with the best of all "the chattels; for the middlemost, half of that; for the

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Annotations.

or otherwise, and the father's own choice, provided the mother be incapable of bearing more children, are the two periods here meant. But in fact, whether it be an hereditary estate, or his own acquired property, the time of the father's property ceasing is the only admissible period of partition. The distinction is, in the case of dividing the grandfather's estate, that the circumstance of the mother's being incapable of bearing more children is associated with it. This should be understood; for, even in the instance of a distribution made by the father, his property in the share receivable by his son is annulled by his own relinquishment. Else, if the father's property subsist, his goods could not become heritage, nor be subject to partition; since his sons have no previous vested right. S'RÍCRĬSHN'A.

35. *Without restriction.*] According to the author's own doctrine, the double allotment concerns hereditary property only, and is consequently propounded with discrimination of cases. But, according to the opinion of his opponent, who admits the double share in the case of the father's own [acquired] property, the allotment of such share is here declared in regard to the grandfather's estate also, since there is no specified restriction of it to the father's wealth. RAGH. on *Dáya-bhága.*

36. *By this argument.*] Having in the preceding paragraph shown, that a double allotment for the father is ordained by express passages of law, the author proceeds to shew by the following reasoning, that, since a double share is allotted to the elder brother, two shares must *a fortiori* be given to the father who is entitled to greater reverence. MAHE'S'WARA.

37. *Middlemost.*] Here the word middlemost intends the next after the eldest: and those born after him are all comprehended under the term youngest. S'RÍCRĬSHN'A.

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* NA'REDA, 13. 12. Vide § 46. † CHU'DA'MAN'I, S'RÍCRĬSHN'A, &c.

"youngest a quarter of it,"*) and shares increased by one portion, by half of one, and by a quarter, are propounded by other passages of the same author: ("If a deduction "be thus made, let equal shares of the residue be allotted; "but if there be no deduction, the shares must be distri-"buted in this manner; let the eldest have a double share; "and the next born, a share and a half; and the youngest "sons each a share: thus is the law set-"tled."†) GAUTAMA likewise, after directing, that "A twentieth part shall belong to the eldest, besides "a pair [of goats or sheep,] a car, together with beasts that "have teeth in both jaws, and also a cow and bull;"‡ (*i. e.*, a pair of goats, or the like, a car with horses or other beasts having teeth in both jaws, and a bull together with a cow; all this shall belong to the eldest;) and after directing, that "cattle blind of one eye, or aged, dwarfish, or disfigured, "shall belong to the middlemost, if there be more than "one;"§ (*i. e.*, aged or old, dwarfish or stunted, disfigured or having a distorted tail; these shall appertain to the middlemost, provided the cattle be numerous;) and after further directing, that "A sheep, grain, iron, a house, and, "together with a cart, one of each sort of quadruped, shall be "given to the youngest; all the residue shall be equally "divided;"‖ (*i. e.*, a sheep and other things, as specified, shall be allotted to the youngest; but let the brethren divide equally the whole of the residue;) has by the following passage allotted a double share to the eldest: "Or let "the first born have two shares, and the rest take one a "piece."¶

and GAUTAMA.

Annotations.

A pair of goats, &c.] Or of sheep or other cattle. But kine are separately mentioned. S'RÍCRÍSHN'A.

Provided the cattle be numerous.] But if they be few, the distribution should be adjusted in proportion to the deduction receivable by the eldest. S'RÍCRÍSHN'A.

A house.] A habitation other than that which is the father's abode. For so S'ANC'HA ordains. S'RÍCRÍSHN'A.

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* MENU, 9. 112. † MENU, 9. 116—117. ‡ GAUTAMA, 28. 5

§ GAUTAMA, 28. 6. ‖ GAUTAMA, 28. 7—8. ¶ GAUTAMA, 28. 9—10.

38. Not as acquirer of the wealth.

38. It must not be argued, that the eldest has a double share allotted to him as the acquirer of the wealth. For the allotment of two shares is directed " if there be no deduction :" now a deduction could not be supposed in the case of an acquisition ; and, since the middlemost and youngest are not, inasmuch as they are acquirers of the property, distinguished from the eldest, the assigning of a share and a half, or other less portion, [as a share and a quarter,*] to them, would be incongruous, and the use of the term " eldest," &c., would be impertinent.

39. But in right of primogeniture: as hinted by MENU, who denies that right to the appointed daughter.

39. Accordingly, in the case of a partition between an appointed daughter and a true legitimate son, MENU ordains, " A daughter having " been appointed, if a son be afterwards " born, the division of the heritage must in " that case be equal, since there is no right " of primogeniture for the woman."† Thus propounding equal partition, because there is no right of primogeniture in this instance by reason of her sex, the author thereby intimates, that a male would have had a double share [in right of his being eldest.¶]

40. The maxim, that more is not

40. In regard to what is said, that as in the instance of the *Hóláca*, a passage of revelation to this effect, " The *Hóláca*

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39. *Accordingly.*] Since priority of birth determines the right to a superior allotment. ACHYUTA.

Since the right to a double share is founded on primogeniture. S'RÍCRÍSHN'A.

40. *As in the instance of the* Hóláca.] The author proceeds to refute the opinion of some writer, who reconciles the matter on the principle of the reasoning taught under the head of *Hóláca.* MAHE'S'WARA.

It is the 8th topic in the third chapter of the 1st book of JAIMINI's *Mímánsá.* Vide Infra. C. 6. Sect. I.—§ 22.

The *Hóláca* is the festival of spring *(Vasanta)*, and is observed by the *Práchyas.* S'RÍCRÍSHN'A.

It is called *Hóláca* or *Hóli.* The *Práchyas* are the orientals contrasted with the *Udíchyas*, or people of the north, and *Dácshin'átyas*, or people of the south. The celebration of the *Hóli* is peculiar to the eastern *Hindus*, as the festival or worship of *Caranjárca* is peculiar to the southern *Hindus.* See S'RÍCRÍSHN'A, &c

* S'RÍCRÍSHN'A. † MENU, 9. 134. Vide Infra. C. 10. § 2. ¶ RAGH. on *Dáya-bhága.*

to be assumed than is necessary, does not authorize the assumption, that the precept relates to an acquirer.

"ought to be performed," is assumed for the justification of the practice of celebrating that festival which is in use among the *Práchyas;* (for it can be sufficiently justified by such a passage ; and one, containing the word *Práchya* or other restrictive term, need not be supposed, since the proof of it would be burdensome ;) so, in this case likewise, a passage of revelation in these words, "Let the acquirer take a double share," must be inferred, and not one containing the word "eldest" or other restrictive term. That argument is not right; for, in the one case, the practice observed by the *Práchyas* can be justified by a general precept of revelation, which must be presumed to that end. It should not be alleged, that one containing the term *Práchya* must be supposed for the sake of justifying the omission of that festival by others than *Práchyas.* Omission, consisting in non-performance, is no fit reason for presuming a lost revelation. But, here, since MENU and the rest use the word "eldest," a passage of Scripture containing that term ought to be presumed to justify its insertion ; not one exhibiting the word "acquirer ;" since there is no necessity for assuming this : nor is there any special authority for the proof of one containing both terms. It should not be alleged, that, since it is necessary to suppose a revelation for the purpose of authorizing the acquirer's double share in other cases, that may be the origin of the law in this case also, for it is an easy conclusion, and the word "eldest" may signify the acquirer. The reverse is equally possible ; for, if a revelation containing the term "eldest" be supposed, even the word "acquirer" might just as well be presumed to signify eldest, since there is no ground of preference. Besides, on the same principle of facility, a supposed passage of Scripture, containing three, four, or more terms, may be any how inferred from reasoning ; and the terms of the whole law may be made to relate to it, by interpreting them according to analogy and metaphor ; and thus may you demonstrate your skill in the law. Therefore, since an established practice, or a sentence of memorial law, from which a passage of Scripture is to be inferred, may be sufficiently justified by assuming a passage in which the particular practice is described, or the words of the law are contained ; more should not be presumed. And such is the import of the reasoning, instanced under the head of *Hóláca.*

41. VASISHT'HA distinctly assigns two shares to the eldest brother, and two to the acquirer.

41. Accordingly [since primogeniture and acquisition are severally, and independently of each other, reasons for the allotment of a double share,*] VASISHT'HA, having ordained a double share for the eldest brother, separately propounds the allotment of two shares to the acquirer. Thus, after premising "Partition of herit-"age among brothers,"† he says "Let the eldest take two "shares;"‡ and at no great distance adds: "He, amongst "them, who has made an acquisition, may take a double por-"tion of it."¶ Two shares being thus ordained by this author in right of acquisition, his direction for a double allotment, to be given to the eldest brother, would be impertinent.

42. VRĪHASPATI authorizes two shares in right of birth, knowledge and virtue.

42. The right of taking a double share, too, is not confined to the case of primogeniture. Thus VRĪHASPATI says: "The eldest by birth, by "science, and by good qualities, shall obtain "a double share of the heritage, and the "rest shall share alike: but he is as a "father to them." If the allotment of two shares were only in right of acquisition, the mention of birth, science, and good qualities, would be useless.

43. The allotment of two shares concerns partition among brothers of the whole blood only, or of the half blood only. The deduction of a twentieth, &c., regards the half blood.

43. This double portion is applicable to the case of partition among whole brothers [or among half brothers only;§] and the deduction of a twentieth part for the eldest is relative to partition among brothers of both the whole and the half blood. For VRĪHASPATI says: "All sons of regenerate men, born of "women equal by class, should share

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41. *Would be impertinent.*] For two passages of one author cannot signify the same thing; since one of them would be superfluous. S'RÍCRĬSHN'A.

43. *All sons of regenerate men.*] CULLU'CA BHAT'T'A infers from this and the following passage of MENU's Institutes, (9. 157) that no deduction is allowed in favour of the first-born at a partition among the sons of a *S'údra* man. JÍMU'TA-VA'HANA's commentators. CHU'DA'MAN'I and S'RÍCRĬSHN'A, oppose that

* S'RÍCRĬSHN'A and ACHYUTA † VASISHT'HA, 17, 36. ‡ VASISHT'HA, 17. 37.
¶ VASISHT'HA, 17. 42. § S'RÍCRĬSHN'A and ACHYUTA.

as is hinted by VRĬHASPATI.

"alike after giving a deduction to the "eldest."*

44. For this being restricted to the half blood, the other relates to the whole blood.

44. Since partition among sons born of several wives, equal by class, is here stated as preceded by a deduction, it follows, that the doctrine of a double share relates to the case of whole brothers: and this is proper, for the elder brother has the greater weight among his brethren, from the circumstance of his being of the whole blood.

45. The deduction is disallowed in the case of brothers equally meritorious.

45. The deduction also of one in ten cows, &c., must not be made. So MENU declares: "Among "brothers successful in the performance of "their duties, there is no deduction of the "best in ten, though some trifle, as a mark "of greater veneration, should be given to "the first-born."†

46. Thus the elder brother being entitled to two shares of the patrimony, surely the father shall have two shares of it.

That is hinted by VRĬHASPATI.

46. By the reasoning thus set forth, if the elder brother have two shares of the father's estate, how should the highly venerable father, being the natural parent of the brothers, and competent to sell, give or abandon the property, and being the root of all connexion with the grandfather's estate, be not entitled, in like circumstances, to a double portion of his own father's wealth? VRĬHASPATI, extending to the eldest son the right to a double share because

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doctrine, and assert the right of a *S'údra's* eldest son to the established deduction. But RAGHUNANDANA, in the *Dáyatatwa*, supports CULLU'CA BHAT'T'A's opinion. The arguments are long.

45. *Successful in the performance of their duties.*] It is here understood, that all have equal good qualities. But, if endowed with superior qualities, the eldest has his regular deduction. CHU'DA'MAN'I.

The meaning is 'though successful.' But, if incapable, the rather shall there be no deduction. MAHE'S'WARA.

46. *Extending to the eldest son.*] By ascribing to the first-born equality with the father, it is implied, that, in like manner as the father has a right to

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* MENU, 9. 156. Though here cited from VRĬHASPATI; but it is quoted from MENU in the *Dáyatatwa*, *Calpataru*, *Retnácara*, &c.

† MENU, 9. 115.

he is like a father, as expressed in a passage above cited (§ 42,) does thereby intimate a maxim that the father shall have two shares: and the maxim is actually propounded by VRĬHASPATI; for he ordains such an allotment in general terms: "The father may himself take two shares at a partition made in his life-time."* So NA'REDA says: "Let the father, making a partition, "reserve two shares for himself; and the "mother shall take an equal share with her sons, if her "husband be deceased."†

NA'REDA's text (§ 35) again cited.

47. A father, distributing the goods, may take two shares for himself. The construction of the sentence is not, "A father, distributing his "own goods, may take two shares:" for that would contradict the doctrine before stated.

47. And explained.

48. Besides, if the father and son are to share equally the grandfather's wealth, [under texts declaratory of their similar or equal rights,‡] it must be affirmed, that as much as is the father's share, so much [in number and quantity,§] is the son's: not, that the very same effects, and same in quantity, which are the father's, are also the son's: for thus

48. There cannot be equal participation of father and sons in the patrimony.

For either the goods must be in

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two shares, when a partition of his own father's estate is made by him with his sons and grandsons, so is the eldest son entitled to a double portion of his own father's wealth, when partition is made among brothers. S'RÍCRÍSHN'A.

47. *That would contradict it.*] It would be inconsistent with a passage of VISHN'U above cited (§ 16) and with the text of HA'RI'TA (§ 57.) S'RÍCRÍSHN'A and MAHE'S'WARA.

It would contradict the foregoing reasoning (§ 36, &c.) in regard to a double share of the grandfather's property. ACHYUTA.

It would be at variance with the argument, that, if an elder brother have two shares, when the grandfather's estate is divided, surely the father should have as much. CHU'DA'MAN'I.

It would be incompatible with the right of reserving more or less [than a regular allotment] of his own acquired property. RAGH. on *Dáya-bhága*.

The last explanation is wrong, for this doctrine has not been before stated. ACHYUTA.

48. *In common.*] A single article, becoming the subject of two rights of property predicated of two persons, is property in common. S'RÍCRÍSHN'A.

* Already cited, § 35. † NA'REDA, 13. 12. Already quoted, § 35.

‡ MAHE'S'WARA. § ACHYUTA.

common, and consequently there could be no partition.

the property would be in common; and it might be concluded, that like the goods of husband and wife, no partition thereof could take place.

49. Or, if the son have an allotment of equal amount, the eldest brother and his sons taking two shares a piece, would leave but little to a younger brother.

49. Now, if the case were so, [that is, if sons were entitled to share with their father allotments of equal amount, while his property continued;*] the eldest, together with his son, would have four shares, if two must be allotted to his son, at the same time that two are allotted to the eldest himself in right of primogeniture: and one share only would belong to another brother. Thus, if the eldest brother have many children, and equal portions must be assigned to them, as to their father, a mere trifle would remain for a younger brother, which would be in contradiction to great authorities.

50. A passage of VRĬHASPATI concerning equal participation, forbids an arbitrary distribution.

50. As for the text of VRĬHASPATI: "In wealth acquired by the grandfather, whether it consist of movables or immovables, the equal participation of father and of son is ordained:" its meaning is, that the participation shall be equal or uniform, and the father is not entitled to make a distribution of greater or less shares at his choice, as he may do in the instance of his own acquired goods. It does not imply, that the shares must be alike.

51. Or it relates to a son of two fathers (one natural and one adoptive.)

51. Or the text, declaratory of equal shares, may relate to a father who is himself son of two fathers; [one the natural, and the other the adoptive parent.]

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51. *Or the text may relate.*] CHU'DA'MAN'I understands the author to propose the second interpretation (which is founded on a text of S'ANC'HA as by him explained;) because this passage of VRĬHASPATI propounds the father's want of independent power in regard to all property movable or immovable, and is consequently irreconcilable to other texts which allow his dominion over gems, pearls, and the like, but deny his independence in regard to immovables, a corrody or pension, and slaves. But S'RÍCRĬSHN'A and ACHYUTA restrict movables in this place to signify slaves; and thus reconcile those texts. They expound "equal" as it were alike. As the father is a sharer, so is the son.

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* MAHE'S'WARA.

52. The text of Ya'jnyawalcya has been already expounded (§ 9.)

52. The passage, which declares that "the ownership of father and son is the "same," has been already expounded, (§ 9, &c.)

53. It is said, that, being an eldest son, the father has two shares in a partition with his sons, as with his brothers; but not unless he be eldest.

53. Moreover, it is said, if that father be eldest, as rescuing his own father from the misery to which a childless person is doomed, it is assuredly reasonable, that he should have an allotment twice as great as his own sons, in the same case in which he would have double the allotment of his brothers, because he was as a father to them, for it is through him, that his sons are connected with the hereditary property. But if he be not the eldest son of his father, he takes only an equal share with his sons.

54. That is wrong: he should have two shares in right of paternity.

54. That is not accurate. For, since a share and a half, or other specific allotment, is ordained for the middlemost and other sons, it is assuredly fit, that the father should have a double share, in right of paternity; and it is not proper on the part of yourself and the holy writers, to direct the equal participation of father and son in general terms.

55. The allotment of a double share cannot relate to acquired wealth, which the owner may divide as he pleases.

55. Besides, the allotment of two shares to the father is not properly applicable to his own acquired wealth; as appears from the circumstance, that the distribution of it follows his choice. The precept regarding that allotment would be superfluous, since he may, at his choice, have either more or less than two or than three shares. Nor can the text be restrictive,

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52. *Already expounded.*] In the two modes above stated, (§ 9 and 15.) Achyuta.

Conformably to the opinion of D'ha're's'wara and others (§ 15.) Mahe's'wara.

53. *The misery to which a childless person is doomed.*] The hell called *Put.* (Vide C. 11. Sect. I.—§. 31.) Achyuta.

54. *It is fit he should have a double share.*] Since it is not reasonable, that in the same case in which the middlemost has a share and a half, and the rest have other appropriate portions, the father should in right of paternity have less, namely, a single share. S'rícrïshn'a.

It is not proper to direct equal participation in general terms.] For the proper direction is, that the father of a son, who has only one parent, should have a double share; but the father of a *Cshétraja*, or other offspring of two fathers, should have a single share. S'rícrïshn'a.

It is so declared by VISHN'U.

for it would contradict VISHN'U, who says: "When a father separates his sons from "himself, his own will regulates the distri-"bution. But, in the estate inherited from the grandfather, "the ownership of father and son is equal."*

56. Exposition of the text.

56. The meaning of this passage is, 'In the case of 'his own acquired property, whatever he 'may choose to reserve, whether half, or 'two shares, or three, all that is permitted 'to him by the law: but not so, in the case of property 'ancestral.'

57. A passage of HA'RI'TA cited.

57. Accordingly HA'RI'TA says: "A father, during "his life distributing his property, may "retire to the forest, or enter into the "order suitable to an aged man; or he "may remain at home, having distributed small allotments "and keeping a greater portion: should he become indi-"gent, he may take back from them."

58. And explained.

58. By this text the father is authorized to distribute a small part, and to reserve the greatest portion of his wealth. "The order suitable "to an aged man," intends retirement.

59. A text of S'ANC'HA and LIC'HITA expounded.

59. As for the text of S'ANC'HA and LIC'HITA, "If he be son of one father "*(écaputra)*, he may allot two shares to "himself," the sense of it is this 'The

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57. *The order suitable to an aged man.*] If the period for becoming an anchoret be arrived, let him become an anchoret; if the period for the order suitable to old age or that of a resigned recluse is come, let him make his resignation: or if neither of these be the case, the author declares 'he may remain, 'having distributed allotments,' having given them to his sons or other descendants. But if that, which he reserved, be wasted by consumption or use, he may take back for his maintenance from his sons to whom he gave allotments. *Dáya-rahasya.*

Should he become indigent.] Should the property reserved by him be expended. ACHYUTA.

Should he have consumed all his wealth. S'RÍCRÍSHN'A.

59. *If he be son of one father.*] This is JÍMU'TA-VA'HANA's interpretation. But CHAN'D'E'S'WARA and the authors of the *Smrítichandricá* and *Viváda-Chan-*

* VISHN'U, 17. 1—2. Vide Supra, § 16.

word *écaputra* means son of one man: it is not a compound 'epithet signifying one who has an only 'son; for that mode of construction prevails 'less than the other. "A son of one man" 'is a true legitimate son. The father, being 'such, is entitled to a double share: not so one who is '(*cshétraja*) issue of the soil, though he be the father of the 'family.' But the text before cited (§ 9), declaratory of the equal ownership of father and son, must be explained as intending a father who was (*cshétraja*) issue of the soil or wife.

The father has two shares if he be son of one father: *i. e.*, legitimate.

60. The offspring of the soil is indeed son of two fathers. BAUD'HA'YANA declares him so: "The son "who is begotten by another on the autho-"rized wife of a man deceased, impotent, "or distempered, is son of the soil. He is "considered as son of two fathers, as par-"taking of both families, and as heir to the "wealth and obsequies of both."

60. For issue raised to a childless man, is the offspring of two fathers. BAUD'HA'YANA has so declared.

61. The meaning of this is, that the son begotten by another person on the wife of an impotent man or the like, with the husband's consent, is termed (*cshétraja*) the son of the soil.

61. Exposition of his text.

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dra, follow the other exposition, "If he be father of one son;" and VA'CHESPATI MIS'RA, with the author of the *Madana ratna* and others, adopting this exposition, explains "one" as signifying excellent, and pre-eminent, or, in short, virtuous.

That mode of construction prevails less than the other.] According to a maxim of grammar, that mode of composition, in which the principal term is no member of the compound epithet, must not be preferred to the more perspicuous composition in which the principal term is a member of the compound word. This maxim is here alluded to: and the author accordingly considers "son of one" to be a simpler explanation than "he who has one son."

61. *The son begotten by another person.*] A son begotten by another person on the wife of a deceased man; or begotten on the wife of an impotent man with his consent. S'RÍCRÍSHN'A.

A son begotten or procreated by another on the wife of a deceased man, is one description of *Cshétraja*, or son of the soil: another is a child begotten by a different person on the wife of a man not deceased, but impotent or the like, being authorized, that is, being sanctioned by the impotent husband. Permission having been granted to another man to procreate a son, the child was sanctioned. The author explains the second description of son of the soil. But the first is not explained by him, being considered as sufficiently clear. MAHE'S'WARA.

62. So NA'REDA says: "The produce of seed, which "is sown in a field with permission of a "proprietor, is considered as belonging to "both the owner of the seed and the pro- "prietor of the soil."*

62. Confirmed by a passage of NA'REDA.

63. Hence [since the compound epithet is a construction not to be preferred;†] and because the term *(écaputra)* ought to be made significant in the passage in question, as an epithet of the agent in the sentence; the notion, that it is vaguely used as an epithet of the subject, is confuted.

63. The ambiguous term, in the text before cited, (§ 59) must be construed absolutely.

64. Besides, one, who continually explains in a vague sense, terms used by authors transcendantly wise, as MENU, GAUTAMA, DACSHA, and the rest, only demonstrates his own unsettledness.

64. Terms employed by the sacred writers, are not to be continually taken in a vague sense.

65. Thus the father has a double share even of wealth acquired by his own son. For the expression is general: "let him reserve two "shares;"‡ or "he may take two shares."¶ CA'TYA'YANA declares it very explicitly: "A father takes either a double share, or "a moiety, of his son's acquisition of wealth; "and a mother also, if the father be deceas- "ed, is entitled to an equal portion with "the son."

65. A father has two shares even of his son's acquisitions.

As ordained by CA'TYA'YANA, who allots two shares or a moiety to the father.

Annotations.

63. *And because.*] "And" must be here supplied. In some copies, the reading actually is so. MAHE'S'WARA.

As an epithet.] Being an epithet of the agent, it is a condition of the action in question. ACHYUTA.

The notion that it is vaguely used, is confuted.] "Let the father, being "*(écaputra)* parent of one son, allot two shares to himself." In this precept, the allotment of two shares is the act to be done; and the father is the subject of it. Consequently the circumstance of his being *écaputra* is an epithet of the subject, vaguely employed. Therefore, if there be many sons, the father still takes two shares. This notion, entertained by others, is here confuted. MAHE'S'WARA.

65. *The expression is general.*] Being applicable without restriction to any property but that which was acquired by himself. MAHE'S'WARA.

Of his son's acquisition of wealth.] Of the wealth acquired by his son. S'RÍCRISHN'A, &c.

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* NA'REDA, 12. 57.
† MAHE'S'WARA. Vide § 59.
‡ NA'REDA. Vide § 35 and § 46.
¶ VRÍHASPATI. Vide § 35.

66. Exposition of this text.

66. The meaning of this passage is, that the father has a right to take either a double share or a moiety of his son's acquired wealth.

67. Another interpretation rejected.

67. It must not be explained thus: 'From the acquisition of both son and wealth, the father 'becomes entitled to two shares; but from 'no acquisition of a son, the owner keeps 'the whole.' For it is admitted, that, when partition is made with brothers, one, who even has not got a son, takes two shares, as the gainer of the wealth: how then can he keep the whole? It must therefore be affirmed, that, if any relative exist, who is entitled to participate, the acquirer has two shares; but, if there be none, he keeps the whole: and thus the specific mention of father and son becomes unmeaning, like the singing of a drunkard. Besides, acquisition is an act causing property: and it is a contradiction to say that it does not produce property, since it has been expressly declared to do so [by the wise.*] Neither is it true, that a son is the property of his father. For the contrary is shown under the head of gift of a whole estate. The term acquisition would be therefore metaphorical in regard to sons, and literal in respect of wealth. But that is inadmissible in the instance of a single term once uttered.

Annotations.

A mother also.] This relates to the father's wealth. ACHYUTA.

That wealth, of which the son takes a share, when his father is deceased, must be here intended. Therefore the son's acquired wealth is excluded. MAHE'S'WARA.

67. *From the acquisition of both son and wealth.*] The ambiguity arising from the use of the term acquisition, and that in the ablative case, instead of the relative, gives occasion to the author to go into a further disquisition on the meaning of the text.

For the contrary is shown under the head of gift of a whole estate.] For it there appears, that the prohibition against giving away a son is founded on reasoning, inasmuch as a son is not the property of his father. S'RICRISHN'A.

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* ACHYUTA and S'RICRISHN'A.

68. It must not be argued, that the precept would be superfluous, since the son's right to a double share is demonstrable, because the wealth was acquired by him ; and since the father's right to two shares is also deducible independently of this text ; [and*] their equal participation may be thence inferred. The precept is significant : since, without this text, there is no ground for concluding a father's right to two shares of his son's wealth.

68. The precept, as above explained, is not superfluous.

69. Besides, if the term "acquisition of wealth" be interpreted as relating to the father's goods, his right of taking two shares, or a moiety, at his choice, would be inapplicable, for his power of taking according to his pleasure, and the exercise of his will, are unrestricted. He may choose to take a share and a half, or one and a quarter, or three quarters of one share. How then are only two cases stated ? That it cannot intend a restriction [to those two cases†] nor relate to the father's own goods, has been already shown [from two passages before cited :‡] and it is as fit that he should have a moiety of his son's acquired wealth, as it is that he should have two shares of such wealth.

69. It cannot relate to the father's own goods.

70. Nor does the text intend his taking a moiety of two shares, or, in other words, a single share. For moiety and share being relative terms, imply a something of which they are parts : and, since they are equal in regard to the person and to the act of taking, they cannot relate to each other. As the interpretation, which takes the relative term "double share," in construction with "acquisi-

70. Nor can it intend a moiety of two shares, *i. e.*, one share.

Annotations.

In the instance of a single term once uttered.] For it is a maxim, that a term, uttered once, conveys a single meaning : and it would be inconsistent to give it two different senses at the same time. S'RÍCRÍSHN'A.

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* ACHYUTA. † S'RÍCRÍSHN'A.

‡ S'RÍCRÍSHN'A. See VISHN'U, cited § 16 & 55, and HA'RI'TA quoted, § 57.

"tion of wealth" in the ablative, is unexceptionable, it is also right to construe the word moiety with it; for the terms are contiguous. A moiety of the wealth, therefore, is meant; not a moiety of two shares, or in other words a single share: for it would be improper, while the obvious term, "a single share," might have been used, to employ a term, which does not express that sense. A moiety of the wealth, then, is the right interpretation.

71. Either a moiety, or a double share, is allotted, according as the patrimony has, or has not, been used in making the acquisition.

71. Here, the father has a moiety of the goods acquired by his son at the charge of his estate; the son, who made the acquisition, has two shares; and the rest, take one apiece. But, if the father's estate have not been used, he has two shares; the acquirer, as many; and the rest are excluded from participation.

72. Or a moiety is allowed, if the father possess good qualities. But two shares in right merely of paternity.

72. Or else, a father, endowed with knowledge and other excellencies, has a right to a moiety: for an increased allotment is granted to the eldest by science and other good qualities. But one destitute of such qualities has a double share in right merely of his paternity.

73. Recapitulation. A father may take two shares of inherited property; and of wealth acquired by his son. He may reserve as much as he pleases of his own acquisitions.

73. Therefore, the meaning of the texts is, that a father may reserve for himself two shares of wealth which has descended in succession [from ancestors,] or of that which has been acquired by his son. He is not entitled to more, however desirous of it he may be. But, of his own acquired wealth, he may reserve as much as he pleases.

74. He may give or withhold the eldest son's deduction from the patrimony: and he may distribute his acquired property unequally.

74. Among his sons, he may make the distribution, either by giving [to the first born] or withholding [from him] the deduction of a twentieth part of the grandfather's estate. But, if he make an unequal distribution of his own acquired wealth, being desirous of giving more to one, as a

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Annotations.

73. *The meaning of the texts.*] NA'REDA'S (§ 35) &c. MAHE'S'WA'RA.

74. *The father, so doing, acts lawfully.*] Thus an unequal distribution among sons, without any of the reasons for it here specified, is not lawful even in the case of his acquired property. S'RI'CRISHN'A.

a token of esteem, on account of his good qualities, or for his support on account of a numerous family, or through compassion by reason of his incapacity, or through favour by reason of his piety; the father, so doing, acts lawfully.

75. For YA'JNYAWALCYA, VRĬHASPATI and NA'REDA have pronounced that lawful.

75. YA'JNYAWALCYA declares it: "A lawful distribution, made by the father, among sons separated with greater or less allotments, is pronounced [valid]."* So VRĬHASPATI: "Shares, which have been assigned by a father to his sons, whether equal, greater, or less, should be maintained by them. Else they ought to be chastised." NA'REDA likewise: "For such as have been separated by their father with equal, greater, or less allotments of wealth, that is a lawful distribution: for the father is lord of all."†

76. It is so only in the instance of the father's acquired wealth: as is ordained by VISHN'U.

76. Since the circumstance of the father being lord of all the wealth, is stated as a reason, and that cannot be in regard to the grandfather's estate, an unequal distribution, made by the father, is lawful only in the instance of his own acquired wealth. Accordingly VISHN'U says, "When a father separates his sons, from himself, his own will regulates the division of his own acquired wealth. But in the estate inherited from the grandfather, the ownership of father and son is equal."‡

77. The unequal distribution, meant

77. As a superior allotment, in the form of a deduction, is indicated by a pas-

Annotations.

76. *That cannot be in regard to the grandfather's estate.*] Although the father be in truth lord of all the wealth inherited from ancestors, still the right here meant is not merely ownership, but competency for disposing of the wealth at pleasure: and the father has not such full dominion over an estate ancestral. S'RÍCRĬSHN'A.

77. *The text would be impertinent.*] As distinguishing partition made by a father from a division made by brothers, the text declaring valid a lawful unequal distribution would be impertinent. Consequently that passage (YA'JNYAWALCYA, 2. 117) does not intend greater or less allotments, as with or without deductions; but it relates to a distribution of unequal shares made according to the father's pleasure. S'RÍCRISHN'A.

* YA'JNYAWALCYA, 2. 117. † NA'REDA, 13. 15.

‡ VISHN'U, 17. 1—2. Vide Supra. § 16 and § 55.

by YA'JNYAWALCYA (§ 75), is not one made according to specific deductions, as hinted by the same author.

sage of YA'JNYAWALCYA, ("When the father "makes a partition, let him separate his "sons according to his pleasure; and either "dismiss the eldest with the best share; or, "if he choose, all may be equal sharers."*) how is any other unequal distribution here ordained? The answer is, such cannot be the meaning, for the text would be impertinent, since a superior allotment, resulting from the deduction of a twentieth part, is admissible when partition is made by brothers after the demise of the father.

78. Nor does it intend equal distribution without specific deductions.

78. Perhaps the text is propounded for the purpose of legalizing an equal distribution made by the father, without the authorized deductions? No: for then a less allotment only is declared lawful, as made by the father; and the word greater would be impertinent.

79. Part of the passage cited would be impertinent under that limitation.

79. Besides, if the mention of greater or less shares here intend the regulated deductions, the second verse of the stanza ("let him separate his sons according to his pleasure,") becomes superfluous; for that, which was to be declared, is fully specified in the three other verses of that text. But, according to our interpretation, the phrase, "let him separate his sons according to his pleasure," relates to his own acquired wealth; while the allotment of the best share, and an equal distribution, both regard an estate inherited from the grandfather. There is consequently nothing superfluous.

80. VRÏHASPATI propounds two modes of partition among co-heirs; one by specific deduction; the other by equal shares; thus there

80. Moreover, two modes of partition after the death of the father are actually declared by VRÏHASPATI in these words: "Partition of two "sorts is ordained for co-heirs: one, in the "order of seniority; the other, by allot- "ment of equal shares." By saying "in "the order of seniority," the author indicates specific deductions. Equal partici-

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Annotations.

78. *For then a less allotment only is declared lawful.*] An equal share assigned by the father is less in comparison with a share to which a deduction is added as is practised among brothers. S'RÍCRÏSHN'A.

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* YA'JNYAWALCYA, 2. 115.

would be no distinction between that, and partition by the father.

pation is the other mode. Now, since two sorts of mutual partition among brothers are thus expressly declared, there would be no distinction between that and a distribution made by a father.

81. Na'reda declares two modes of partition by the father.

81. So Na'reda says: "The father, being advanced in "years, may himself separate his sons; "either dismissing the eldest with the best "share, or in any manner as his inclination "may prompt."*

82. And here the best share for the eldest is distinguished from unequal partition at will.

82. The unequal distribution, here intended, appears evidently to be different from that, which consists in giving the best share to the first born; since the author, having noticed the allotment of the best share to the eldest, again says "or as his inclination may "prompt;" thereby distinctly authorizing any unequal distribution, which the father, for reasons before-mentioned, may think proper to make.

83. Another passage of Na'reda, restraining the father's power, forbids an unauthorized distribution made without sufficient cause.

83. But the text of Na'reda, which expresses, that "A "father, who is afflicted with disease, or "influenced by wrath, or whose mind is "engrossed by a beloved object, or who "acts otherwise than the law permits, has no "power in the distribution of the estate;"† relates to the case where the father, through perturbation of mind occasioned by disease or the like, or through irritation against any one of his sons, or through partiality for the child of a favourite wife, makes a distribution not conformable to law. Nevertheless, unequal partition is lawful, when grounded on [either of the four‡] reasons abovementioned.¶

84. A passage of Ca'tya'yana confirms this inference.

84. Thus Ca'tya'yana says: "But let not a father "distinguish one son at a partition made "in his life-time, nor on any account ex"clude one from participation without suffi"cient cause."

85. Exposition of the text.

85. Let him not distinguish one by the allotment of a greater portion, nor ex-

Annotations.

85. *Since the meaning is even one son.*] The particle must be here understood, being inferred from reasoning. Achyuta and S'ri'crishn'a.

* Na'reda, 13. 4. † Na'reda, 13. 16. ‡ Mahe's'wara. ¶ § 74.

clude one from participation by depriving him of his share, without sufficient cause. [This does not relate to specific deductions :*] for the distinguishing of sons by alloting to them the prescribed deductions [of a twentieth, and half or a quarter of a twentieth,†] extends to many [viz., eldest, middlemost, and youngest;‡] and is not confined to one. One son should not be distinguished without cause. But, for a sufficient reason, it may be done. Since the meaning is "even one son." The distinguishing of one, [as here forbidden,] has no reference to specific deduction ; but intends a distribution made according to the father's mere pleasure, as before explained.

It does not relate to authorized specific deductions.

86. However, when sons request partition in the father's life-time, an unequal allotment should not be granted by him. MENU declares it, "Among undivided brethren if there be "an exertion in common, the father shall "on no account make an unequal distribu-"tion in such case."§

86. When partition is made by desire of the sons, no unequal distribution should be made.

So MENU.

87. But the regular deduction ought in this instance to be allowed by the father. For it is not of the nature of an unequal distribution ; and the allotment of greater or less shares is alone forbidden.

87. The regular specific deductions should, however, be allowed.

88. Thus partition made by a father [has been explained.]

88. Conclusion.

Annotations.

86. MENU *declares it.*] The passage of MENU here cited is understood otherwise by his commentator CULLU'CA BHAT'T'A, and by numerous compilers. S'RÍCRÍSHN'A supports the interpretation, which JÍMU'TA-VA'HANA had in view in this citation.

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* S'RÍCRÍSHN'A. † S'RÍCRÍSHN'A. ‡ MAHE'S'WARA. § MENU, 9. 215

CHAPTER III.

Partition by Brothers.

SECTION I.

Partition improper in the Mother's life-time. Management of the affairs during the continuance of the family partnership. Any one co-parcener may insist on separation. Right by representation admitted as far as the third degree.

1. Partition among brothers. after the death of the father, is not right while the mother lives.

1. PARTITION among brothers, after the demise of the father, is next explained. That partition is pronounced to be not lawful, among brothers of the whole blood, while the mother lives, although the ownership of wealth be vested in them by the death of

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Annotations.

1. *That partition is not lawful.*] The partition is valid, but is not morally right. S'RÍCRÍSHN'A.

Partition is not lawful while the mother survives. If it be nevertheless made, a share is ordained for the mother. RAGH. *Dáyatatwa.*

By declaring it unlawful, it is intimated, that partition is not laudable, while the mother is living; not that is null. CA'S'IRA'MA on the *Dáyatatwa.*

As hinted by MENU.

their father. For the text ("after the "father and the mother," &c.*) propounds a division of the paternal estate among brothers of the whole blood subsequent to the demise of both parents.

2. The text, which supposes her previous demise, does not relate to her particular property.

2. It does not intend a distribution of the mother's goods, after her demise. For partition of the patrimony only is suggested by the term paternal; and there is no authority for interpreting it parental.

3. The partition of that is separately noticed by the same author.

3. Besides, it would be a repetition: for the division of the maternal estate, on the death of the mother, is subsequently noticed by MENU in a separate text.†

4. A passage of YA'JNYAWALCYA confirms this inference.

4. Thus YA'JNYAWALCYA says "Let sons divide equal-"ly the effects and the debts, after the "death of both parents. But daughters "share the residue of their mother's pro-"perty, after payment of her debts; and "the [male] issue in default of daughters."‡

5. For, unless it be so interpreted, there would be tautology.

5. Since the latter half of this passage shows, that sons have no right of participation in the mother's goods, if daughters exist; but, if none exist, then sons have the right of succession, being intended by the term "issue;" the father's estate only can be meant, in the former half of the text, by the word "parents:" for otherwise there would be tautology.

6. The author has designedly associated the deaths of father and mother as requisite to a lawful partition by brothers.

6. The author, declaring that brothers may divide after the death of the father and mother, propounds a time subsequent to the demise of both as a fit period of partition; and the association [of their deaths] appears therefore to be designedly expressed.

Annotations.

6. *The author, declaring.*] In several copies of JÍMU'TA-VA'HANA, I find the name of YA'JNYAWALCYA here interpolated. But it appears from the remarks of S'RÍCRĬSHN'A, who refers to the particle "and" as marking the association of the terms, that MENU before cited is the author intended.

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* MENU, 9. 104. Vide C. 1. § 14. † MENU, 9. 192. Vide C. 4.

‡ YA'JNYAWALCYA, 2. 118. Vide Supra. C. 1. § 48.

7. Accordingly S'ANC'HA and LIC'HITA say, "Since "the family is supported on the inheritance, "sons are not independent: but as it were "under the authority of a father, so long "as the mother lives." They are not independent of their mother; they are not competent to make a partition.

7. S'ANC'HA & LIC'HITA deny the independence of sons, while their mother lives.

8. VYA'SA very explicitly declares it. "For brethren a common abode is ordained, so long as both parents live: but, "after their decease, religious merits of "separated brethren increase."

8. VYA'SA clearly forbids separation of co-heirs during the life of both parents.

9. Since the author forbids the separation of brethren by commanding them to live together, and prohibits partition with one whose father and mother are living, the association of their survival is not positively intended in the phrase "so long as both parents live." Therefore, if one parent be living, partition is not lawful; but it is so, when both are dead.

9. Thus partition is unlawful while either of them lives;

but is lawful, when both are dead.

10. Thus VRĬHASPATI says: "On the demise of both "parents, partition among brothers is al- "lowed: and, even while they are both "living, it is right if the mother be past child-bearing."*

10. VRĬHASPATI confirms this.

11. Since partition while the mother is living cannot be relative to the mother's particular property, and since the authorized partition after the demise of both parents, which is indicated by the particle in the phrase "even while they are both living," is thus pronounced to be proper; partition among brothers after the death of parents is evidently relative to the father's wealth.

11. His text relates to partition of the father's estate.

Annotations.

9. *The association of their survival is not positively intended.*] If the association, suggested by the dual member in the phrase, "so long as both "live," were positive, dwelling together would not be requisite in consequence of the survival of one: partition might therefore take place while the mother was living, and might be even claimed on her death while the father was yet living. The author therefore declares it not to be positively intended: S'RÍCRÍSHN'A.

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* Vide Supra. C. 2 § 1.

12. Accordingly VYA'SA propounds partition, in the mother's life-time, made with reference chiefly to her: "If there be many sons of "one man, by different mothers, but equal "in number, and alike by class, a distribu- "tion among the mothers is approved." So VRĬHASPATI says: "If there be many "sprung from one, alike in number, and in "class, but born of rival mothers, partition must be made "by them, according to law, by the allotment of shares to "the mothers."

12. VYA'SA and VRĬHASPATI direct partition in the mother's life-time to be made with reference chiefly to her, in certain circumstances.

13. Since there is no difference in the sons' shares, for they are equally numerous and of the same tribe, partition is to be made by an allotment to the mother, not to the sons. Therefore, as in the case of other wealth of the mother's, so in this instance [of the father's wealth, which is become their property,*] sons have not independent power to make a partition among themselves, while the mother lives; but, with her consent, the partition is lawful.

13. Hence it is inferred, that sons have not power to divide while the mother lives, unless with her consent.

14. Hence, what is said by GAUTAMA and others ("In partition there is in- "crease of religious merit;"†) must be understood after the demise of the mother.

14. Separation is pronounced by GAUTAMA, &c., to be laudable, supposing the mother's demise.

15. If then they desire to remain unseparated, the eldest brother, being capable of the care and management of the estate, may take the whole; and the rest should live under him, as under a father. Thus MENU says, "The eldest brother may take the patri- "mony entire; and the rest may live under "him as under their father."‡ So GAUTAMA:

15. While the brethren choose to remain together, the eldest should have the management: as ordained by MENU and GAUTAMA.

Annotations.

13. *For they are equally numerous and of the same tribe.*] If they were of different tribes, the shares would be unequal, viz., four, three, two, and one, in the order of the classes. If they were not equally numerous, inequality in their rights, as sons, might be apprehended. CHU'D'A'MAN'I.

15. *The analogy of the loaf and staff.*] To gnaw the staff was difficult for the rat; but, if that were accomplished, the eating of the loaf, which was attached to it, was easy. So in other cases, according to the circumstances of them, if one of associated things be true, the other may be rightly inferred. RAGH. *Dáyatatwa.* Vide Supra. C. 2. § 25.

* ACHYUTA and S'RÍCRĬSHN'A. † GAUTAMA, 28. 4. ‡ MENU, 9. 105.

"Or the whole may go to the first born; and he may sup-"port the rest as a father."* From the particle "or" it appears, that they may either become separate or continue to dwell together; and their dwelling together must be by consent of all. Thus NA'REDA says, "Let the eldest brother, by "consent, support the rest like a father; or "let a younger brother, who is capable, do "so. The continuance of the family depends "on ability."† Even the youngest, being capable, may govern all the brethren. The middlemost of course may, being here inferred by the analogy of the loaf and staff.

NA'REDA declares consent to be necessary.

And a younger brother, being most capable, may have the charge of the estate and family.

16. Any one co-heir may require partition.

16. But partition takes place by the will of any one [of the co-heirs], as before intimated.

17. As appears from the provision in CA'TYA'YANA'S text, for securing the shares of minors and absentees, who of course have not consented.

17. Accordingly [since partition by the choice of one co-heir is lawful;‡] CA'TYA'YANA, treating of partition, says: "Let them deposit, free "from disbursement, in the hands of kins-"men and friends, the wealth of such as "have not attained majority; as well as of "those who are absent." So a text expresses, "The property of minors should "be so preserved until they attain their full age."§

18. Partition extends to grandsons and great grandsons in the male line.

18. The rule of distribution among sons extends equally to them and to grandsons and great grandsons in the male line. There is not here an order of succession

Annotations.

16. *As before intimated.*] For it was declared, in treating of partition, that any one person is complete owner of his own wealth. CHU'D'A'MAN'I, S'RÍCRÍSHN'A, &c.

17. *Such as have not attained majority.*] Whose age does not exceed fifteen years. S'RÍCRÍSHN'A.

As well as those who are absent.] It is here evident, that partition takes place without their consent. S'RÍCRÍSHN'A, CHU'D'A'MAN'I, &c.

18. *In regard to the presenting of two oblations, &c.*] Where two persons are connected by a common oblation, the one partakes of the oblation presented at the other's obsequies. (Vide Infra. C. 11. Sec. 1. § 38.) MAHE'S'WARA.

* GAUTAMA, 28. 3. † NA'REDA, 13. 5. ‡ ACHYUTA.

§ In the *Víramitródaya*, where the whole passage of JÍMU'TA-VA'HANA is quoted, this text is ascribed to VISHN'U. It is not, however, found in VISHN'U's Institutes.

following the order of proximity according to birth. For those three persons, the son, grandson, and great grandson, do not differ, in regard to the presenting of two oblations at solemn obsequies, one which it was incumbent on the ancestor to present, and the other which is to be tasted by his manes. Hence it is, that DE'VALA says, 'A father, a grandfather, and a great 'grandfather, assiduously cherish a new born son, as birds 'the holy fig-tree,* [reflecting] "he will present to us a '"funeral repast with honey, meat, and herbs, with milk, '"and with rice and milk, in the season of rains, and under '"the asterism *Mag'há.*'" So S'ANC'HA, LIC'HITA, and YAMA,† 'A father, a grand-'father, and a great grandfather, welcome 'a new born son, as birds the holy fig-tree, [reflecting] "he '"will give us contentment with honey, and meat, and '"[especially the flesh of] rhinoceros, and with milk, and '"with rice and milk, in the season of rains, and under the '"asterism *Mag'há.*'" From the mention of the great grandfather, it appears, that "son" here intends a descendant as low as great grandson. Thus, since such a descendant confers benefits on his ancestors up to the great grandfather, by presenting oblations to the manes, the descendant within the degree of great grandson has an equal right of inheritance.

By reason of benefits conferred by them on the manes of ancestors.

DE'VALA hints this:

and so do S'ANC'HA, LIC'HITA, &c.

19. Hence it is, that the son and grandson, whose own fathers are living, have no right of succession; for they do not present oblations to the manes, since they are incompetent to the celebration of solemn obsequies.

19. Not however those, whose fathers are living: for they make no offerings to the manes.

20. After the death of parents, the special distribution, [which might have been] made by a father, cannot have effect

20. The arbitrary allotment, which a father may make,

Annotations.

Hence it is, &c.] The author adds this as a further proof, that the daughter's son, though within those degrees, does not inherit jointly with son's sons. CHU'DA'MAN'I and ACHYUTA.

20. *The special distribution.*] The allotment of unequal portions on account of piety and so forth. CHU'DA'MAN'I and ACHYUTA.

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* *Pippala.* Ficus religiosa.

† This is the reading of all the collated copies of JÍMU'TA-VA'HANA; but the transcript of this passage in the *Víramitródaya* exhibits the name of GAUTAMA.

is not permitted among brothers.

among brethren. But all the rest, as before explained, must be here again admitted.

21. Grandsons, whose father is deceased, are entitled to just so much as would have been his share.

21. If there be one son living, and sons of another son [who is deceased,] then one share appertains to the surviving son, and the other share goes to the grandsons, however numerous. For their interest in the wealth is founded on their relation by birth, to their own father ; and they have a right to just so much as he would have been entitled to.

22. A passage cited concerning allotment of shares according to the fathers, does not relate to partition between uncle and nephew.

22. The text, which expresses " Among the issue of " different fathers, the allotment of shares " is according to the fathers,"* does not relate to this case [of partition between uncle and nephew.†] For the whole estate belonged to the uncle's father, and therefore the whole would belong to him, and no part of it, to his nephews. Or, if partition is to be made as between father and son, under the direction for the allotment of shares according to the fathers, the uncle would have two shares because a father has a right to a double portion ; and the nephews would have a single share. But this is contrary to the approved usage of the wise.

23. But intends partition between

23. The purport of the text, however, is this. If there be a numerous issue of

Annotations.

All the rest.] Giving to the first born, or withholding from him, the deduction of a twentieth part. (Vide C. 2. § 74.) CHU'DA'MAN'I and ACHYUTA.

21. *For their interest is founded on their relation by birth.*] The right of succession is not founded solely on the gift of a funeral oblation ; but also on the relation by birth as son or grandson. Else the daughter's son might be supposed to have an equal title. ACHYUTA.

22. *The text does not relate to this case.*] Does it signify, that the same share, which would have been the father's, is the son's ? or does it direct, that partition be made as between father and son ? The author successively refutes both these interpretations. S'RÍCRÍSHN'A.

A variation in the reading of the text is noticed by VIS'WE'S'WARÁ BHAT'T'A in his commentary on the *Mitácshara*, which obviates all ambiguity: viz., " whose fathers are deceased" *(Pramita-pitrĭcán'am)* instead of " whose fathers " are different." *(Anéca-pitrĭcánám.)*

* YA'JNYAWALCYA, 2. 121. † MAHE'S'WARA.

cousins whose fathers died before their grandfather.

one brother and few sons of another, then the allotment of shares is according to the father's.

SECTION II.

Partition with or without specific deductions. Provision for the Mother; and for the Sister.

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24. Two modes of partition among brothers are authorized; one with, the other without, specific deductions.

24. In the next place, [after defining the periods, when partition among brothers may take place,*] two modes of partition among brethren alike by class are propounded; namely, either with specific deductions of a twentieth and so forth, or else an equal division.

25. Equal shares are ordained by HA'RI'TA.

Us'ANAS.

PAIT'HI'NASI,

and YA'JNYA-WALCYA.

25. HA'RI'TA ordains an equal distribution without deductions, in the following passage, after speaking of a father: "If he be dead, the "partition of inheritance should be made "equally." So US'ANAS says, "This rule of "partition is declared for brethren of various tribes, being "born of women of classes below the father's; but the dis-"tribution among brothers born of women of the same "tribe is ordained to be made equally." Thus PAIT'HI'NASI says, "When the pater-"nal inheritance is to be divided, the shares shall be "equal." YA'JNYAWALCYA also declares, "Let the sons divide equally the effects

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Annotations.

24. *Either with specific deductions.*] Partition with regulated deductions has been already stated. (MENU, 9. 112.) Vide C. 2 § 37. The author proceeds to adduce authority for an equal division. (§ 25.)

25. *Two modes of partition*, § 24. *Two modes of distribution*, § 25.] Constituting an optional alternative. CHU'D'A'MAN'I. A regulated not an optional alternative. S'RÍCRĬSHN'A.

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* S'RÍCRĬSHN'A

"and the debts, after the death of both parents."* Thus, there are two modes of distribution; namely, with or without specific deductions.

26. But equal distribution is not indispensable.

An option exists.

26. It must not be argued, that the practice of equal partition is indispensable, as the only mode authorized by law. For the brethren may consent to the deductions by reason of great veneration [for the eldest.] An option exists like that of making or omitting partition.

27. Though a division with specific deductions be now rare.

27. Accordingly, since persons of the present day [who are younger brothers†] entertain not great veneration [for their elders,] equal distribution is alone seen in the world; as also because elder brothers deserving of deducted allotments are now rare.

28. A co-heir may relinquish his share, taking some trifle to obviate future cavil on the part of his representatives. As MENU and YA'JNYAWALCYA have provided.

28. If one of the co-heirs, through confidence in his own ability, decline his share of the wealth inherited from the father, grandfather, or other ancestor, something should be given to him, be it only a *prast'ha* of rice, on his separation, for the purpose of obviating any future cavil on the part of his son or other heir. Thus MENU says, "If any one of the "brethren has a competence from his own "occupation and desires not the property, he may be de-"barred from his share, giving him some trifle in lieu of a "maintenance."‡ So YA'JNYAWALCYA; "The separation of "one who is able to support himself, and is not desirous of "participation, may be completed by giving him some "trifle."§

Annotations.

27. *Like that of making or omitting partition.*] Entrusting the estate to the management of the eldest brother, the rest live under him as under a father: this is omission of partition. Separation is the making of partition. MAHE'S'WARA.

28. *Any future cavil on the part of his son.*] Or recourse to litigation on the plea, that his father did not relinquish his share. MAHE'S'WARA.

A different interpretation of the passages here cited, which is maintained by the author of the *Prácás'a*, and which disagrees with the *Mitácshara* and other authorities, is confuted by S'RÍCRÍSHN'A and ACHYUTA.

* YA'JNYAWALCYA, 2. 118. Vide Supra. § 4.
† S'RÍCRÍSHN'A. ‡ MENU, 9. 207. § YA'JNYAWALCYA, 2. 117.

29. The mother shares equally with her sons after the father's demise. A text cited.

29. When partition is made by brothers of the whole blood, after the demise of the father, an equal share must be given to the mother. For the text expresses, "The mother "should be made an equal sharer."*

30. And expounded.

30. Since the term mother intends the natural parent, it cannot also mean a step-mother. For a word employed once cannot bear the literal and metaphorical senses at the same time.

31. If no separate property had been given to the woman, she has a share. At a partition by the father, all his wives partake. YA'JNYAWALCYA is authority for this.

31. The equal participation of the mother with the brethren takes effect, if no separate property had been given to the woman. But, if any have been given, she has half [a share.†] And, if the father make an equal partition among his sons, all the wives [who have no issue‡] must have equal shares with the sons. So YA'JNYAWALCYA declares: "If "he make the allotments equal, his wives, "to whom no separate property has been given by their "husband, or their father-in-law, must be rendered partakers "of like portions."§ "To a woman, whose husband marries a "second wife, let him give an equal sum, as a compensa-"tion for the supercession, provided no separate property "have been bestowed on her: but, if any have been "assigned, let him allot half."¶

Annotations.

31. *But if any have been given, she has half.*] Although this properly relate to the case of a superseded wife, yet it may be so assumed in the present case also; conformably with the maxim, that the sense of the law, as ascertained in one instance, is applicable in others also, provided there be no impediment. CHU'D'A'MAN'I.

If the reasoning be equally applicable, an interpretation of law, ascertained in one case, is admitted in another. Therefore, a son must give, both to his mother and step-mothers, allotments equal to half his own share, if separate property have been bestowed on them, because that is ascertained to be the law in the case of partition made by the father. MAHE'S'WARA.

Provided no separate property have been bestowed on her.] This is the reading of the text, as it is cited by the author of the *Tatwa*. In many copies of JÍMU'TA-VA'HANA, the reading is "them" *(yásám)* for "her" *(yasyai.)* It is an error of the transcriber; for the context requires the singular number. MAHE'S'WARA.

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* VRÍHASPATI. It is the sequel of the passage cited in Ch. 2. § 35. † MAHE'S'WARA. ‡ S'RÍCRISHN'A. § YA'JNYAWALCYA. 2. 116. ¶ YA'JNYAWALCYA. 2. 149

32. But those wives only, who have no male issue, take shares.
VYA'SA and VISHN'U confirm this.

32. Wives of the father [meaning step-mothers*] who have no male issue, not those who are mothers of sons, [must be rendered*] equal sharers [with the son.*] So VYA'SA ordains "Even childless wives of the father are "pronounced equal sharers; and so are all "the paternal grandmothers: they are "declared equal to mothers." VISHN'U likewise says, "Mothers receive allotments according to the shares of "sons; and so do unmarried daughters."†

33. The wife's portion, like a son's, is according to her tribe.

33. According to the shares of sons.] As sons are entitled to four shares, three, two, or one, in the order of the classes; so are the wives also.

34. So is the daughter's: and her share is a quarter of the son's: as declared by VRI-HASPATI.

34. Unmarried daughters, likewise, following the allotments of sons, take a quarter thereof. Thus VRĬHASPATI says, "Mothers are equal sharers with them; and "daughters are entitled to a fourth part."

35. She has one part and he has three: as CA'TYA'YANA ordains.

35. A son has three parts and a daughter one. So CA'TYA'YANA declares: "For the unmarried daughter a quarter "is allowed; and three parts belong to

Annotations.

Let him allot half.] The allotment of a moiety implies that the other moiety is completed by the woman's separate property. Else so much only should be given as will make her allotment equal to the son's. MAHE'S'WARA.

32. *Childless wives of the father.*] A certain author supposes this to relate to partition made by sons, because the father's wives, whether mothers of sons or childless, take one share a-piece at a distribution made by the father. But that is erroneous: for it is inconsistent with the remark, that the word mother does not signify step-mother. (§ 30.) S'RICRĬSHN'A and ACHYUTA.

Grandmothers.] When the father divides his own father's property with his sons, it is right, that he should give to his own mother, on whom no separate property has been bestowed, a share equal to his own. But, if there be any childless step-mothers, he need not give them allotments out of the grandfather's estate, but food and raiment only; for they cannot be intended by the word grandmother, and the analogy of the step-mother holds goods. CHU'DA'-MAN'I.

Some say, that the word grandmother here signifies the father's natural mother; for the reasons before explained. But others infer from the use of the plural number, and the mention of "all," that all the wives of the grandfather shall have shares. S'RÍCRĬSHN'A.

The first is CHU'D'A'MAN'I's interpretation, which is refuted by MAHE'S'WARA, who maintains the second opinion.

* RAGH. on *Dáya-bhága.* † VISHN'U, 18. 34—35.

" the son. But the right of the owner [to exercise discre-
" tion] is admitted when the property is small."

36. But, if the funds be small, the sons must contribute so much from their respective allotments.

36. If the funds be small, sons must give a fourth part to daughters, deducting it out of their own respective shares. Thus MENU says, " To the maiden sisters let their brothers " give portions out of their own allotments " respectively : let each give a fourth part " of his own distinct share : and they, who refuse to give it, " shall be degraded."*

37. Daughters do not take portions in right of inheritance.

37. Let each give.] From the mention of giving, and the denunciation of the penalty of degradation, if they refuse, it appears, that portions are not taken by daughters as having a title to the succession. For one brother does not give a portion out of his own allotment to another brother who has a right of inheritance.

38. But because the brethren are bound to defray the charges of a sister's marriage and a brother's ini-

38. Thus YA'JNYAWALCYA, saying " Un- " initiated brothers should be initiated by " those for whom the ceremonies have been " already performed ; but sisters should be " disposed of in marriage, giving them as

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Annotations.

36. *If the funds be small.*] If the property be not sufficient to defray the nuptials of a daughter with a fourth part of the amount receivable by a son, the funds are said to be small. In such a case a partition is made exclusively among the brethren ; and afterwards the daughter's nuptials are defrayed with contributions from their respective allotments. S'RÍCRÍSHN'A.

Out of their own allotments respectively.] This is according to the usual reading of the text. But VA'CHESPATI MIS'RA reads and interprets *swébhyah swébhyah* ' taken from their own brothers,' instead of *swébhyó' nsébhyah* ' out ' of their own allotments.' The author of a commentary on the *Dáya-bhága*, to which RAGHUNANDANA's name is affixed, censures that variation of the reading.

37. *Not as having a title to the succession.*] The doctrine of the *Mitácshara*, that the daughter has a right of inheritance like the son, is thus refuted. RAGH. on *Dáya-bhága*.

38. *By those for whom the ceremonies have been performed.*] MAHE'S'WARA quotes and refutes the author of the *Tatwa*, as maintaining, on the authority of this text, that the charges of a sister's marriage are to be defrayed by those brothers only who have been initiated. But no passage of such an import has been found in the *Dáyatatwa*.

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* MENU, 9. 118.

tiation: as declared by YA'JNYAWALCYA.

"an allotment, a fourth part of a brother's "own share;"* declares the obligation of disposing of them in marriage, not their right of succession.

39. If the wealth be great, a sufficiency for the nuptials, and not a quarter part, is given.

39. Thus, [since the daughter takes not in right of inheritance;†] if the wealth be great, funds sufficient for the nuptials should be allotted. It is not an indispensable rule, that a fourth part shall be assigned.

40. The allotment of a quarter implies an equal number of sons and daughters.

40. This [allotment of a fourth part if the funds be small‡] must be understood as applicable only, where the number of sons and daughters is equal. For, if the number be unequal, either the daughter would have a greater portion, or the son would be entirely deprived of property. But that cannot be proper, since the son is principal [in relation to the inheritance].

41. An argument in support of the specific allotment grounded on a passage of NA'REDA.

41. It is stated as an objection, that, as the defraying of the nuptials of a sister is an indispensable obligation under the text of NA'REDA, which expresses, "If no wealth of the father "exist, the ceremonies must without fail be "defrayed by brothers already initiated; "contributing funds out of their own portions;"§ the impoverishment of the brothers is no exceptionable consequence.

42. Refutation of that argument.

42. That is wrong. For the text is intended to provide for initiatory ceremonies of brothers; and the reading of it, which expresses, that

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Annotations.

39. *It is not indispensable that a fourth be assigned.*] For a passage of VISHN'U,|| cited by [VA'CHESPATI] MIS'RA and the rest, provides, that "the son "should defray the initiatory ceremonies [of other sons] and nuptials of un-"married sisters, suitably to the wealth." The *Retnácara* and the rest concur in this. RAGH. on *Dáya-bhága*.

40. *If the number be unequal.*] If there be four sons or a greater number, and only one daughter, she has a larger portion. If there be four daughters and one son, he is deprived of wealth. S'RÍCRÍSHN'A.

42. *The reading which expresses "ceremonies of brethren" is unauthentic.*] Some writers, who so read the text, interpret brethren as signifying brothers and sisters (the feminine word being merged in the masculine term); and they infer that the ceremonies of both are intended. The author refutes that opinion. CHU'DA'MAN'I.

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* YA'JNYAWALCYA, 2. 125. † MAHE'S'WARA. ‡ MAHE'S'WARA.
§ NA'REDA, 13. 34. || VISHN'U, 15. 31

"the ceremonies of brethren must be defrayed by those who "are already initiated," is unauthentic;* and the initiation of a brother was the subject treated of. It had been already said, "For those, whose forms of initiation have not been "regularly performed by the father, these ceremonies must "be completed by the brethren out of the patrimony."† Here the pronouns "those" and "whose" are in the masculine gender. But this text immediately precedes the one before cited ("If no wealth of the father exist, &c.") That passage therefore relates to the initiation of brothers.

43. Conclusion.

43. Thus partition of the wealth of the father, grandfather, or other ancestor, [has been fully explained.‡]

Annotations.

That passage relates to the initiation of brothers.] Is not then the defraying of a sister's nuptials enjoined? Thou art mistaken in that supposition. The marriage of a sister is an indispensable obligation. What then? On the demise of the father, the obligation of completing the initiation of brothers devolves on the brethren. But, in regard to the marriage of a sister, the authority devolves on the grandfather by the death of the father; and on the brethren, if the grandfather be dead. Thus, in a case where the disposal rests with the grandfather, the brethren, though not competent to dispose of their sister in marriage, might be liable to impoverishment. RAGH. on *Dáya-bhága*.

In fact, after the demise of the father and grandfather, the brother also is bound to defray his sister's nuptials, as having the authority to dispose of her in marriage. Therefore, as the brother may be impoverished by defraying the initiatory ceremonies of numerous brothers, so it is no exceptionable consequence that he may be impoverished by defraying his sister's nuptials. This should be considered by the wise. S'RÍCRĬSHN'A.

The ceremonies of brothers include marriage, according to some authors. But [VA'CHESPATI] MIS'RA here explains them as terminating at the investiture with the sacrificial thread. RAGH. on *Dáya-bhága*.

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* The reading here censured occurs in the *Retnácara*, *Chintáman'i*, *&c.*, viz., *bhrátrĭnám púrva-sanscrĭtaih*, in place of *bhrátrĭbhih purva-sanscrĭtaih*. The latter is the reading in the *Víramitródaya*, *Dáyatatwa*, *&c.*

† NA'REDA, 13. 33. ‡ CHU'D'A'MAN'I.

CHAPTER IV.

Succession to Woman's Property

SECTION I

Separate property of a Woman defined and explained.

1. The peculiar property of a woman is of various sorts; as enumerated by VISHN'U.

1. IN the next place, for the purpose of teaching the distribution of a woman's separate goods, such property is first described. On this subject VISHN'U says, "What has been "given to a woman by her father, her "mother, her son, or her brother, what has been received "by her before the nuptial fire, what has been presented to "her on her husband's espousal of another wife, what has "been given to her by kindred, as well as her perquisite, "and a gift subsequent, are a woman's separate property."*

2. One sort, termed gift subsequent, is defined by CA'TYA'YANA.

2. CA'TYA'YANA defines a gift subsequent. "What "has been received by a woman from the "family of her husband at a time posterior "to her marriage, is called a gift subse- "quent; and so is that which is simi-

Annotations.

2. *At a time posterior to her marriage.*] It is thus evident, that presents

* VISHN'U, 17. 13.

" larly received from the family of her kindred. Whatever
" is received by a woman after her nuptials, either from her
" husband or from her parents, through the affection of the
" giver, BHRĬGU pronounces to be a gift subsequent."

3. Interpretation of his text.

3. By the word "kindred" her father and mother are denoted. Hence the meaning is this: any thing received subsequently to the marriage, from [maternal or paternal uncles or other*] persons who are related through the father or the mother, or from those two parents themselves; or so received from the

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Annotations.

given by her father, her mother, her brother, or her kindred, (§ 1) intend what is given at any other time. ACHYUTA and S'RÍCRĬSHN'A.

From the family of her kindred.] Several variations in the reading of the text have been remarked; the most material of which is at the close of it, here read, *band'hu-culát tát'há* 'similarly from the family of her kindred;' but in the *Mitácshará*, &c., *Pitrĭ-culàt tat'hà*, 'from her father's family;' and in the *Retnàcara* and other compilations, *Swa-culàt tat'hà*, 'from her own 'family.' The text is cited again, Section 3, § 16.

3. *From his family, namely, her father-in-law, &c.*] It thus appears, that a present given to a woman by her son, which is noticed in VISHN'U's text (§ 1), is not [technically] included among gifts subsequent, since the son cannot be here comprehended under the terms "kindred," and "family of the "husband," in the sense in which they are here used; for the son's relation is immediate. S'RÍCRĬSNN'A.

Either the husband or the parents inherit.] The meaning is this: the technical term, "gift subsequent" is useful relatively to the brother's succession to property, under that denomination, left by a childless woman. But the brother is not heir to what was received by her at the time of her nuptials: since the husband is successor in the instance of a marriage celebrated in one of the five forms called *Bràhma*, &c., and the parents are so in the other three marriages named *As'ura*, &c., or, on failure of them, the brother-in-law and so forth. Hence the term would be useless, if its signification were general. Or, if the contrary term were taken as comprehending it, a limitation must be argued in the text which specially declares the succession of the husband and the rest; because it would contradict the passage concerning the brother's right of succession. Thus, under the maxim "prevention is better that remedy;" (literally "better not touch mud than wash it "off;") the use of a term which obviates that difficulty was proper. S'RÍCRĬSHN'A.

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* S'RÍCRĬSHN'A.

husband, or from his family, namely, her father-in-law and the rest; is a gift subsequent. But the term 'kindred,' in the text of VISHN'U, intends maternal uncles and others; for the father and the rest are specified by the appropriate terms: and either the husband, or the parents, inherit that which was received at the time of the nuptials, according to the difference between marriages denominated *Bráhma*, &c., and those called *As'ura* and so forth.

4. Six sorts are specified by MENU and CA'TYA'YANA; and by NA'REDA.

4. MENU and CA'TYA'YANA describe the separate property of a woman. "What was given "before the nuptial fire, what was present-"ed in the bridal procession, what has been "conferred on the woman through affection, and what has "been received by her from her brother, her mother, or her "father, are denominated the six-fold pro-"perty of a woman."* So NA'REDA says: "What was given before the nuptial fire, what was present-"ed in the bridal procession, her husband's donation, and "what has been given by her brother or by either of her "parents, is termed the six-fold property of a woman."†

5. CA'TYA'YANA defines gift before the nuptial fire; and gift presented in the bridal procession.

5. CA'TYA'YANA explains this: "What is given to "women at the time of their marriage, "near the nuptial fire, is celebrated by the "wise as the women's peculiar property bes-"towed before the nuptial fire. That again, which a "woman receives while she is conducted from the parental "[abode, to her husband's dwelling,] is "instanced as the separate property of a "woman, under the name of gift presen-"ted in the bridal procession."

6. Exposition of the text.

6. Since the term "parental" is derived from a complex expression, of which one member only is retained, the presents, which she

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Annotations.

4. *Conferred on the woman through affection.*] This passage is read differently in most quotations of the text: "given in token of love," *dattan cha príti carman'i*, in place of *dattan cha prítitah striyai*.

6. *One member only is retained.*] The term *paitríca* may signify paternal.

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* MENU, 9. 194. † NA'REDA, 13. 8.

receives from the family of either her father or her mother, while she is conducted to the house of her husband, are gifts presented in the bridal procession.

7. The word *dàya*, in the passage above cited, signifies not heritage, but gift.

7. "Her husband's donation" (*dáya*) is wealth given (*datta*) to her by her husband; [not, as the word might be supposed to signify, the heritage of her husband.*] For MENU and others [viz., CA'TYA'YANA and VISHN'U†] notice that which is given (*datta*) to her by him, without mentioning his donation (*dáya*,) and NA'REDA specifies donation (*dáya*), without any separate notice of given (*datta*.)

8. Other instances occur of that use of the term; as in a passage of CA'TYA'YANA.

8. In other instances also, "husband's donation" is used for wealth given by the husband. Thus CA'TYA'YANA says, "Let the woman "place her husband's donation as she "pleases, when he is deceased: but, while "he lives, she should carefully preserve it, "or else [if unable to do so‡] commit it to the family."

Annotations.

as derived from *pitrĭ*, father; or parental, as deduced from the complex expression *màtrĭ pitrĭ* father and mother, retaining the single term *pitrĭ*, according to a grammatical rule for rejecting the feminine word in such instances. PA'N'INI. 1. 2. 70.

This is according to a reading of the text, which is countenanced by the *Retnàcara* and *Chintàman'i*: but the *Smrĭtichandricà* and *Mitàcshara* read *pitur grĭhat* 'from the father's house,' instead of *paitrĭcat* 'from the parental [abode].'

From the family of either her father or her mother.] Is not the father's house properly signified by the word "parental?" For the mother's abode is the same with the father's. What use then is there in interpreting the term as signifying parental instead of paternal? The author shows the use of that interpretation. It comprehends the case of her being carried from the house of her paternal grandfather, or from that of her maternal grandsire and so forth. MAHE'S'WARA.

7. *Her husband's donation.*] Gift is the literal interpretation of the word *dàya*. Inheritance, or succession to the estate of a deceased person in right of relation to him, is a metaphorical sense of the same term. RAGH. on *Dàya-bhàga*.

8. *Thus* CA'TYA'YANA *says.*] The passage of CA'TYA'YANA, here cited, is explained by CHAN'DE'S'WARA and VA'CHESPATI MIS'RA, conformably with the opinion of the author of the *Pracàs'a*, as intending property which has devolved on a widow by the death of her husband leaving no preferable heir; as well as property accruing to her, during his life-time, by his consent: the

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* ACHYUTA, S'RÍCRĬSHN'A, &c. † S'RÍCRĬSHN'A ‡ ACHYUTA, S'RÍCRĬSHN'A, &c.

9. Exposition of the text.

9. The meaning of the passage is this: wealth given to her by her husband, she may dispose of, as she pleases, when he is dead; but, while he is alive, she should carefully preserve it. This is intended as a caution against profusion.

10. Confirmed by a passage of VYA'SA; in which the same term occurs and must be taken in the same sense.

10. So the text of VYA'SA, concerning the limits of the value which may be given by her husband, [exhibits the same term.*] "A present, amounting to two thousand *(pan'as)* "at the most, may be given to a woman, "out of the wealth: and whatever property "is given to her by her husband, let her "use as she pleases."† As far as two thousand [*pan'as*] a present may be given to a woman, but not more. In answer to the question by whom given? the construction refers to the word husband contained in the text; and one not contained in it must not be assumed. Thus the term *(déya)* 'may be given' retains the literal sense of the verb *(dá)* to give. But, since so

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Annotations.

first part of the passage being referred to the one; and the second to the other subject. The close of the passage is interpreted, as directing the widow to commit *herself* to the care of her husband's family, if there be no property left by him. HELA'YUDHA and PA'RIJAT'A are cited as authorities for the different interpretation adopted in the text.

Commit it to the family.] Entrust it to her husband's family; as her mother-in-law, sister-in-law, &c. MAHE'S'WARA.

If she herself cannot preserve it, let her commit it to, or place it with, the family. Some authors interpret this, 'if she cannot subsist on that wealth, '"let her commit herself to the family;" that is, taking refuge with the 'family, let her pass the time with them.' S'RÍCRÍSHN'A.

This is a wrong interpretation, for it is inconsistent with the premises. ACHYUTA.

10. *A present amounting to two thousand at most.*] Copies of this as of other compilations differ in the reading of the first words; which in some transcripts stand *Dwisahasra-pan'ó dàyah;* in others, *Dwisahasrah-paró dàyah*, or *Dwisahasra-paró dàyah;* but in the text of the *Mahábhárata*, whence apparently the passage is taken, *Trisahasra-paró dàyah*, 'three 'thousand at most.' The second is the reading, which agrees best with the remarks of CHAN'D'E'S'WARA and MITRAMIS'RA on the text.

So much as is her husband's estate.] The whole estate of her husband who dies leaving no male issue. MAHE'S'WARA.

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* MAHE'S'WARA.

† A passage, nearly resembling this quotation, occurs in the *Mahábhárata*, *Danad'harma*, 46. 23.

much as is her deceased husband's estate, belongs to the widow, the sense becomes metaphorical [under another interpretation ;] and that is not reasonable.

11. That passage does not limit a widow's participation of her husband's estate.

11. And whatever property is given to her by her husband, let her use as she pleases.] Hence [since the text relates to a gift made by her husband, and not to an allotment delivered to her by an umpire adjusting the succession ;*] the alleged conclusion, that the widow is competent to take so much of the property of her husband, who has died leaving no male issue, as amounts to two thousand [*pan'as*,] and not the whole estate, must be rejected by the wise.

12. This subject will be resumed in another place.

12. This and [the right of the widow to take the whole estate of her husband who leaves no male issue†] will be discussed at full length [under the head of succession to the estate of one who has no male issue.‡]

13. YA'JNYAWALCYA describes the separate property of a woman.

13. YA'JNYAWALCYA explains [a woman's property : §] "What has been given to a woman [before "or after her nuptials,||] by the father, "the mother, the husband or a brother, or "received by her at the nuptial fire, or "presented to her on her husband's marriage to another "wife, [as also any other separate acquisition,] is denominated a woman's property."¶

14. Explanation of his text.

14. That wealth, which is given to gratify a first wife by a man desirous of marrying a second, is a gift on a second marriage : for its object is to obtain another wife [with the assent of the first.]

Annotations.

11. *Hence the alleged conclusion must be rejected.*] A different interpretation of the first part of VYA'SA's text makes it relate to an annual allotment to a woman for her maintenance, which is restricted by that passage not to exceed the sum specified. The *Pracás'a*, quoted by CHAN'D'E'S'WARA, and the *Víramitródaya*, give this construction to the text, and do not consider it as relating to a widow who has of course a provision out of her husband's estate. The interpretation, which JIMU'TA-VA'HANA refutes, is not found in any of the compilations now received as authority.

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* MAHE'S'WARA. † S'RÍCRISHN'A and ACHYUTA.
‡ CHU'DA'MAN'I and S'RÍCRISHN'A, &c. Vide C. 11. § S'RÍCRISHN'A and ACHYUTA.
|| S'RÍCRISHN'A, &c. ¶ YA'JNYAWALCYA, 2. 144.

15. So DE'VALA says: "Her subsistence, her ornaments, her perquisite, and her gains, are the separate property of a woman. She herself exclusively enjoys it; and her husband has no right to use it, unless in distress."*

15. A passage of DE'VALA on a woman's peculiar property.

16. VYA'SA also: "Whatever is presented at the time of the nuptials to the bridegroom, intending [the benefit of the bride;] belongs entirely to the bride; and shall not be shared by kinsmen."

16. And one of VYA'SA.

17. Intending.] Designing, that it shall appertain to the bride. It is not meant, that the property becomes her's, even without such intention. Accordingly the time of nuptials is here stated illustratively; and not as the sole motive. For the will of the giver is the cause of property. So the following authentic text does not specify, that it must be at the time of the nuptials. "What is presented to the husband of a daughter, goes to the woman, whether her husband live or die; and, after her death, descends to her offspring." Here the giver's intention is not specified; because it is implied by the word daughter.

17. Exposition of this passage.

What is at any time delivered to the husband for the benefit of the wife, belongs to her.

18. Since various sorts of separate property of a woman have been thus propounded without any restriction of number, the number of six, [as specified by MENU and others,†] is

18. The number of six sorts (§ 4) is not restrictive:

Annotations

15. *Subsistence.*] What remains of that which is given for her food and raiment.

Gains.] Interest or loans, and so forth. CHU'DA'MAN'I and S'RÍCRĬSHN'A, &c.

Perquisite.] This will be explained under the head of succession to a woman's separate property. CHU'DA'MAN'I.

These terms are otherwise interpreted in the compilations of other schools, as the *Retnácara*, &c., viz., *Gains.*] Wealth received from kindred. *Retn.* Received from any person as an offering to gratify GAURI', or some other goddess. *Víramitr*

Perquisite.] Wealth given to a maiden on account of soliciting her in marriage. *Retnácara.*

* The first term of this text is read *Vriddhi* in the *Smritichandrica*, and is interpreted 'wealth given by the father or other person for increase of prosperity.' The *Madana-ratna* and other authorities read and interpret, as here, *Vritti* 'wealth given by the father or others for subsistence.'

† Vide § 4. S'RÍCRĬSHN'A.

whatever is at her sole disposal, is a woman's separate property.

not definitely meant. But the texts of the sages merely intend an explanation of woman's separate property. That alone is her peculiar property, which she has power to give, sell, or use, independently of her husband's control.

19. Ca'tya'yana expresses this meaning.

19. Ca'tya'yana expresses this rather concisely: "The wealth, which is earned by mechanical arts, or which is received through affection from any other, [but the kindred,] is always subject to her husband's dominion. The rest is pronounced to be the woman's property."

20. Exposition of his text.

The husband has power over wealth earned by his wife, or received in presents from any other but kindred.

20. Over that, which has been received by her "from any other" but the family of her father, mother, or husband, or has been earned by her in the practice of a mechanical art, [as spinning or weaving,*] her husband has dominion and full control. He has a right to take it, even though no distress exist. Hence, though the goods be her's, they do not constitute woman's property; because she has not independent power over them.

21. The wife has sole power over other descriptions of property.

Ca'tya'yana defines gift of affectionate kindred.

21. But in other descriptions of property excepting these two, the woman has the sole power of gift, sale, or other alienation. So Ca'tya'yana declares. "That which is received by a married woman or a maiden, in the house of her husband or of her father, from her husband or from her parents, is termed the gift of affectionate kindred. The independence of women, who have received such gifts, is recognized in regard to that property; for it was given by their kindred to soothe them, and for their maintenance. The power of women over

Annotations.

21. *From her husband.*] This reading of the text is comformable to the quotation in the *Calpataru* and other compilations. But the *Mitácshara* reads "from her brother," *bhrátuh*, instead of "from her husband" *bhartuh*, and is followed by Chan'd'e's'wara and many others. Another variation occurs in the first verse of this stanza, read by Chan'd'e's'wara *Canyayá sárd'ham* "with a maiden," instead of *Canyayá vápi*, "or by a maiden." It is censured as an erroneous reading by Va'chespati Mis'ra.

* Mahe's'wara.

"the gifts of their affectionate kindred is ever celebrated, "both in respect of donation and of sale according to their "pleasure, even in the case of immovables."

22. Explanation of the text.

22. What is obtained from kind relations, [meaning persons of her father's family or her mother's,*] is the gift of affectionate kindred.

23. Immovables given to her by her husband may not be aliened by her.

A passage of NA'REDA proves this.

Other immovables may be aliened.

23. But in the case of immovables bestowed on her by her husband, a woman has no power of alienation by gift or the like. So NA'REDA declares: "What has been given by an "affectionate husband to his wife, she may "consume as she pleases, when he is dead, "or may give it away, excepting immov-"able property."† It follows from the specific mention of "given by a husband;" that any other immovable property, except such as has been given to her by him, may be aliened by her. Else [if this text forbid donation in the case of immovables in general,‡] the preceding passage concerning the power of women in respect of donation and of sale, "according to their plea-"sure, even in the case of immovables," would be contradicted.

24. In distress, a husband may use his wife's property:

24. However, if the husband have no means of subsistence, without using his wife's separate property, in a famine or other distress, he may take it in such cir-

Annotations.

23. *From the specific mention of "given by a husband."*] The author of a commentary, to which is affixed the name of RAGHUNANDANA, remarks in this place, 'Hence it is true, that a woman is entitled to give away even 'immovable property received by the demise of her husband.' As the doctrine, which is here hinted, is opposed by the whole current of authorities, and receives no countenance from RAGHUNANDANA himself, in his undoubted work the *Dáyatatwa*, this passage cannot be considered as of weight to shake the opposite doctrine, which denies the widow's right of alienation unless under very peculiar circumstances. The authenticity of the commentary itself, as a work of RAGHUNANDANA, is more than doubtful. It is of no celebrity; and is suspected to be the work of some later writer, who has assumed RAGHUNANDANA's name and designation.

24. *She may exact her due supply.*] She may take wealth (for the term *swa* signifies wealth) sufficient for food and raiment, &c. She shall obtain from her husband so much as may be ordered by the king. But, if her

* *Dáyatatwa.*

† Not found in NA'REDA's Institutes; but cited in the *Mitácshara*, *Retnácara*, &c.

‡ S'RÍCRĬSHN'A.

as declared by a passage of YA'JNYAWALCYA.

cumstances: but not in any other case. So YA'JNYAWALCYA declares: "A husband is not liable to make good the "property of his wife, taken by him in "a famine or for the performance of a duty, or during "illness, or while under restraint."* CA'TYA'YANA, again, denies the right of the husband to do so in any other circumstance: "Neither the "husband, nor the son, nor the father, "nor the brothers, can assume the power over a woman's "property to take it or to bestow it. If "any one of these persons by force consume the woman's property, he shall be "compelled to make it good with interest, "and shall also incur a fine. If such person, "having obtained her consent, use the "property amicably, he shall be required "to pay the principal, when he becomes rich. But, if the "husband have a second wife and do not show honor to "his first wife, he shall be compelled by force to restore "her property, though amicably lent to him. If food, "raiment, and dwelling be withheld from the woman, she "may exact her due supply, and take a share [of the "estate] with the co-heirs."

But in no other case.

CA'TYA'YANA directs a woman's property to be restored, with or without interest; according as it was taken by her consent or against it.

25. If she be neglected by her husband, she may exact a provision from him.

25. If the husband, having taken the property of his wife, live with another wife and neglect her, he shall be compelled to restore the property taken by him. If he do not give her food, raiment, and the like, that also may be exacted from him by the woman.

26. Conclusion.

26. Thus a definition of woman's property has been propounded.

Annotations.

husband be dead, let her receive an allotment from his co-heirs. MAHE'S'WARA.

She may exact her own; that is, her due supply of food and raiment. She may take from the co-heirs of her husband, that is, from her brother-in-law and the rest, a share, or the portion appertaining to her husband. Some interpret the text; 'She may exact from her husband's co-heirs her own 'allotment, consisting of food, raiment, &c.' This is, however, an erroneous interpretation; for the same meaning is deducible from the single term *swa*, "her own." S'RÍCRISHN'A.

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* YA'JNYAWALCYA, 2. 148.

SECTION II.

Succession of a woman's children to her separate property.

1. Menu propounds the succession to a woman's property.

1. In the next place, partition of woman's property is explained. On that subject Menu says, "When the mother is dead, let all the "uterine brothers and the uterine sisters "equally divide the maternal estate."*

2. It is inherited by her sons and daughters conjointly.

2. Since this suggests the participation of brother and sister, connected in the sentence by reciprocation, although the conjunctive compound do not there occur, by means however of the conjunctive particle, which bears the same import [and is contained in the text,] the meaning of the passage must be this; 'Let sisters and 'brothers of the whole blood share the estate.'

3. So Vrĭhaspati declares.

3. Vrĭhaspati likewise expresses assemblage by the conjunctive particle in the following passage. "A woman's property goes to her "children; and the daughter is a sharer "with them, provided she be unaffianced; but, if married, "she shall not receive the maternal wealth."

Annotations.

2. *By reciprocation.*] The grammatical terms here employed, and the author's reasoning, will be better understood after consulting a note subjoined to the *Mitácshara* on inheritance (2. 11), where the very doctrine is asserted which Jímu'ta-va'hana controverts.

The conjunctive particle.] The particle *cha*, with which the conjunctive compound corresponds in import; according to Pa'n'ini (2. 2. 9.)

3. *She shall not receive the maternal wealth.*] The close of the stanza is read differently in other compilations, *labhaté mána-mátracam*, "She receives "a mere token of respect," instead of *na labhén mátrĭcan d'hanam*, "She shall "not receive the maternal wealth." This reading, which is peculiar to Jímu'ta-va'hana, is disapproved by his commentator Achyuta, who gives reasons for preferring the other; supported as it is by the authority of the *Retnácara*, *Smrĭtichandrica*, &c.

* Menu, 9. 192.

4. Here the term children intends sons: and they share their mother's goods with unbetrothed daughters. So S'ANC'HA and LIC'HITA say, "All uterine brothers are entitled to "the wealth equally; and so are unmarried "sisters."

4. S'ANC'HA and LIC'HITA ordain their equal participation.

5. Since the son is mentioned first in all these passages, he has a right to the succession to his mother's wealth, whatever be his state [initiated or uninitiated*]: and the conjunctive particle, which likewise occurs in every one of those texts, denotes assemblage.

5. The son inherits whether initiated or uninitiated.

6. A passage of DE'VALA is conclusive against one who persists in the controversy, notwithstanding the foregoing reasons. It is as follows: "A woman's property is common "to her sons and unmarried daughters, "when she is dead; but, if she leave no "issue, her husband shall take it, her "mother, her brother, or her father."

6. The text of DE'VALA is conclusive against the supposition, that unmarried daughters and sons inherit successively.

7. Here it is expressly declared, that the mother's goods are common to the son and unmarried daughter: and if the maiden daughter were exclusively entitled to the whole of her mother's estate, [notwithstanding the existence of her brother,†] the special texts of MENU and others, [which will be cited,‡] concerning the (*Yautuca*) wealth given at the nuptials, would be unmeaning; since she would have the right in all cases indiscriminately.

7. Else the special right of the maiden daughter in a particular case would not be declared.

8. But if one should propose this solution: 'the or'daining of equal participation is fit, if the 'brother and sister have alike a right of 'succession to their mother's property;

8. A different argument rejected.

Annotations.

6. *A passage of* DE'VALA *is conclusive, &c.*] Literally, is a choker for an obstinate wrestler.

* S'RÍCRISHN'A and ACHYUTA. † S'RÍCRISHN'A and ACHYUTA.
‡ S'RÍCRISHN'A and ACHYUTA.

'but, if sisters only inherit equally, or, on failure of them, 'brothers only, the declared equality would be impertinent, 'since it might be deduced, without such declaration, from 'reasoning, because no exception to it has been specified:' he might be thus answered [by an obstinate antagonist:*] 'It is no less impertinent to declare equality, on the as-'sumption, that brother and sister inherit; since their 'parity may be in like manner deduced from reasoning.' [The antagonist might proceed to say†] 'Besides, how is it 'impertinent? since, in the case of brothers inheriting 'alone, [upon failure of sisters,‡] the term "equal" is un-'questionably pertinent, as it obviates the supposition, that 'deductions of a twentieth and the like shall be allowed in 'the instance of the mother's estate, as in that of the 'father's.' Therefore, the half learned person [who argues, that the declaration of equality would be impertinent,||] must be disregarded by the wise, as unacquainted with the letter of the law, and with the reasoning [which has been here set forth.¶]

9. On failure of either, the other is heir. On failure of both, a daughter, who has or may have issue, inherits.

9. But for the cause above stated, the son and maiden daughter have a like right of succession. On failure of either of them, the goods belong to the other. On failure of both of them, the succession devolves, with equal rights, on the married daughter who has a son, and on her who may have male issue. For, by means of their sons, they may present oblations at solemn obsequies.

Annotations.

8. *With the letter of the law.*] With the text above cited. (§ 6.) S'RÍCRÍSHN'A.

9. *For the cause above stated.*] Because the word "equally" is not impertinent. RAGH. on *Dáya-bhága.*

On failure of both of them.] Both the son and maiden daughter. MAHE'S'WARA.

The succession devolves . . . . on the married daughter.] And not, as in the instance of wealth given at nuptials, according to a subsequent definition of it, devolving in default of a maiden daughter, on one betrothed; or, for want of such, on a married daughter: since there is no authority for that order of succession in this case. CHU'DA'MAN'I and S'RÍCRÍSHN'A.

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* MAHE'S'WARA. † Ibid. ‡ Ibid. || Ibid. ¶ S'RÍCRÍSHN'A.

10. The daughter's son inherits, in their default.

10 Hence, [since the right is founded on the presenting of oblations at solemn obsequies,*] the daughter's son is entitled to the property, on failure of the daughters above described: for the text of MENU expresses, "Even the son of a daughter delivers him in the next "world, like the son of a son."† Neither a barren nor a widowed daughter inherits; for these present not oblations at solemn obsequies, either in person or by means of their offspring. Accordingly [since the daughter's right of succession is founded on benefits conferred through the means of her male issue;‡ or since neither the barren nor the widowed daughter's right of equal succession is recognized;§] NA'REDA says, "On failure of the son, the daughter inhe"rits; for she equally continues the lineage."||

11. After the son's son.

11. But, if there be a son's son and a daughter's son claiming the succession, the son's son has the exclusive title; for it is reasonable, since the married daughter is debarred from the inheritance by the son, that the son of the debarred daughter shall be excluded by the son of the person who bars her claim.

12. Next the barren or widowed daughter succeeds.

12. On failure of all these abovementioned, including the daughter's son [and the son's grandson,¶] the barren and the widowed daughters both succeed to their mother's property; for they also are her offspring; and the right of others to inherit is declared to be on failure of issue.

Annotations.

10. *The daughters above described.*] A daughter who has a son; and one who may have male issue. MAHE'S'WARA.

Delivers him in the next world.] Since the parity of reasoning holds, the masculine gender is not here exclusive. MAHE'S'WARA.

11. *Debarred from the inheritance by the son.*] The prior right of a daughter's son, in the case of wealth which was given at nuptials, is thus indicated; for, in that instance, the son is debarred from the inheritance by the married daughter. S'RÍCRÍSHN'A.

12. *Including the daughter's son.*] And the son of the son's son; for the right devolves on him, next after the daughter's son, since he confers great benefits on his ancestor. S'RÍCRÍSHN'A.

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* S'RÍCRÍSHN'A. † MENU, 9. 139. Vide Infra. C. 11. Sect. 6. § 31. ‡ S'RÍCRÍSHN'A. § ACHYUTA. || NA'REDA, 13. 50. ¶ S'RÍCRÍSHN'A.

13. Passages, seemingly declaratory of the daughter's succession, to the exclusion of the son, relate to wealth received by the mother at her nuptials.

13. But the text of GAUTAMA, "A woman's separate "property goes to her daughters unaffianced, and to those not actually married;"* that of NA'REDA, "Let daughters divide "their mother's wealth; or, on failure of "daughters, her male issue;"† a passage of CA'TYA'YANA, "But, on failure of "daughters, the inheritance belongs to the "son;" as also one of YA'JNYAWALCYA, "Daughters share the residue of their mother's property, "after payment of her debts; and the male issue succeeds "in their default;"‡ relate only to the *(yautuca)* wealth given at nuptials; for these passages contradict the text of DE'VALA above cited (§ 6.) Accordingly [since it is in the case of wealth given at nuptials, that the unmarried daughter has the prior right of succession;§ or has the exclusive right;||] MENU says, "Property given to "the mother on her marriage *(yautuca,)* is "the share of her unmarried daughter."¶

MENU is explicit.

14. Derivation and meaning of the term *yautuca* or *yautaca.*

14. Here *yautuca* signifies property given at a marriage: the word *yuta*, derived from the verb *yu* to mix, imports "mingling;" and mingling is the union of man and woman as one person; and that is accomplished by marriage. For a passage of Scripture expresses "Her bones "become identified with his bones, flesh with flesh, skin "with skin."** Therefore, what has been received at the time of the marriage, is denominated *Yautuca.*††

15. Answering to *párin'áyya* in VASISHT'HA's text.

15. Accordingly [since the term signifies wealth received at the time of the marriage;‡‡] VASISHT'HA says, "Let

Annotations.

14. *Here* yautuca *signifies, &c.*] This interpretation is opposed by the author to that which is proposed by the *Calpataru*, where the term is explained as signifying 'Savings effected by her good management out of what 'has been given to the woman, for the purpose of providing bread, pot-herbs, '&c.' ACHYUTA.

This alleged interpretation is not found in the *Calpataru*: but the term is there explained 'Wealth given to a woman by her father and the rest, at 'the time of her nuptials.'

15. *Wealth received at a marriage.*] And not, as the term is interpreted in the *Calpataru* and other compilations, 'furniture, mirrors, combs, and the 'like.' S'RÍCRÍSHN'A.

* GAUTAMA, 28. 22. † NA'REDA, 13. 2. ‡ YA'JNYAWALCYA, 2. 118.
§ S'RÍCRÍSHN'A. || ACHYUTA. ¶ MENU, 9. 131. ** *Véda.*
†† This is written both *Yautuca*, and *Yautaca.* *Víramitródaya.* ‡‡ ACHYUTA.

" the females share the nuptial presents (párin'áyya) of " their mother."* For párin'áyya signifies wealth received at a marriage (párin'ayana.)

16. A passage of MENU explained.

16. As for a passage of MENU, " The wealth of a " woman, which has been in any manner " given to her by her father, let the " Bráhman'i damsel take; or let it belong " to her offspring;"† since the text specifies " given by her " father," the meaning must be, that property, which was given to her by her father, even at any other time besides that of the nuptials, shall belong exclusively to her daughter: and the term Bráhman'i is merely illustrative [indicating, that a daughter of the same tribe with the giver inherits.‡] Or, lest the term should be impertinent, the text may signify that the Bráhman'i damsel, being daughter of a contemporary wife, shall take the property of the Cshatriyá and of other wives dying childless, which had been given to them by their fathers. The precept, which directs, that " the property of a childless woman " shall go to her surviving husband;" does not here take effect. Such is the meaning of the passage; for else [according to the preceding interpretation§] all the texts [which declare the equal right of the son and daughter, to inherit their mother's property in certain cases,‖] would be incongruous.

17. The daughter's son is not meant, where it is

17. It must not be argued, that the succession of the daughter's sons, on failure of the daughter, is shown by NA'REDA and others [as YA'JNYAWALCYA, &c.¶] because the word

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Annotations.

According to the *Víramitródaya*, the word, as read by the authors of the *Calpataru* and *Vivάda-chintáman'i*, is different from JI'MU'TA-VA'HANA'S reading, viz., *párin'áyyam*, for *párin'ayyam*. But JÍMU'TA-VA'HANA'S commentators have remarked no difference in the reading, but only in the interpretation.

17. *For the word daughter, as signifying progeny, requires a correlative.*] The single term daughter cannot, in the same phrase, successively signify the progeny and the parent; namely, progeny in respect of the mother, and parent in respect of the male issue. S'RÍCRÍSHN'A, &c.

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* VASISHT'HA, 17. 40. † MENU, 9. 198. ‡ MAHE'S'WARA.
§ S'RÍCRÍSHN'A. ‖ S'RÍCRÍSHN'A. ¶ MAHE'S'WARA. Vide § 13

said, that issue male succeeds on failure of daughters

"issue" is connected in construction with daughter, which is the nearest term. For the word daughter, as signifying a distinct [viz., female*] progeny, requires a parent for its correlative, and must not be connected in construction with "son" another progeny suggested by the term "issue:" since [both terms] alike [need a correlative indicating the parent.†]

18. Such an interpretation cannot be supported by the metaphorical sense of terms.

18. Nor should [the word‡] "issue" be expounded metaphorically, from the appropriate sense, [as signifying male, and "daughter" female; neglecting the relation to a parent indicated by these terms.§] For all the terms [viz., "daughter," repeatedly occurring in various texts;|| or issue, or other equivalent word;¶ or daughter and issue, and, in the text of CA'TYA'YANA, son;**] may be taken in their literal acceptation by connecting them with "mother:" and the word "daughter" is acknowledged to bear the literal sense as connected with the term "mother."

19. Nor by construction.

19. Neither should the construction of the sentence be alleged to be 'issue of the daughter' suggested by the pronoun in the phrase "her issue." (§ 13.) For the pronoun would refer to her as daughter, [not as mother;] since the meaning of the original term is such.

20. The other interpretation is reasonable.

20. Besides, the word "daughters," in the text of YA'JNYAWALCYA (§ 13), having the termination of the first or nominative case, and the pronoun ("their") having that of the fifth or ablative, cannot be connected with the term "issue," by construction which requires the sixth or relative case. But this term governs the word "mother" notwithstanding the intervention of mediate terms. Thus then, with the certainty, that "issue of the mother" is here intended, it is reasonable to interpret issue of the mother [as signifying son††] in the texts of NA'REDA and CA'TYA'YANA: for there can be no contradiction [since the passages must be presumed to be grounded on the same revelation.‡‡]

* S'RÍCRISHN'A and ACHYUTA. † Ibid. ‡ MAHE'S'WARA.
§ S'RÍCRISHN'A, CHU'DA'MAN'I and ACHYUTA. || RAGH. on *Dáya-bhága*.
¶ CHU'DA'MAN'I. ** S'RÍCRISHN'A. †† MAHE'S'WARA.
‡‡ S'RÍCRISHN'A and CHU'DA'MAN'I.

21. It is right, that the son should inherit before the daughter's son.

21. Moreover, conformably with the text of BAUD'HA'YANA "Male issue of the body being "left, the property must go to them;"* and because [the son, as immediate issue of the mother, is] nearer of kin [than the daughter's son, who is a mediate descendant;†] it is reasonable, that the son born of her body should have the right of succession to his mother's property, and not the daughter's son, who is a mediate descendant not born of her person.

22. Nuptial presents go to the daughters.

22. Hence a woman's separate property, received by her at her nuptials, goes to her daughter; and not to her sons [if there be a daughter:‡] and the text of GAUTAMA (§ 13) is intended to explain the order of succession in this case [of an inheritance devolving on the female issue.§]

23. First, unaffianced; next, betrothed; lastly, married daughters.

23. First, the woman's property goes to her unaffianced daughters. If there be none such, it devolves on those who are betrothed. In their default, it passes to the married daughters [as indicated by the conjunctive particle in the text.||] For the right of the female issue generally is suggested by the term "daughters" [in GAUTAMA's text, § 13]; and the special mention of "unaffianc-

Annotations.

21. *A mediate descendant, not born of her person.*] This is according to the common reading of the text, *ná'nangaja-vyavahita-dauhitra*; as interpreted by MAHE'S'WARA. But he notices a variation of the reading, *ná'ngaja-vyavahita-dauhitra*, which he expounds 'A mediate descendant through the 'daughter born of her person.'

22. *The text is intended to explain the order of succession.*] Not to exclude the affianced and married daughters. ACHYUTA.

23. *Pertinent as declaratory of the order of succession.*] Both S'RÍCRÍSHN'A and ACHYUTA notice a variation in the reading of JÍMU'TA-VA'HANA's text in this place; but they deduce the same import, though in different ways.

The order of succession is this: first, the property goes to the maiden daughter; then to one betrothed, for she is superior to the married daughter, because she belongs to the same original family *(gótra)* with her parents. On failure of such, the property devolves on the married daughter; that is, on one who has a son, or who may be expected to have offspring. If there be none such, it goes to any other daughter. S'RÍCRÍSHN'A and ACHYUTA.

* Vide Infra. C. 11. Sect. 1. § 37.
† MAHE'S'WARA.
‡ S'RÍCRÍSHN'A and MAHE'S'WARA.
§ S'RÍCRÍSHN'A and ACHYUTA.
|| ACHYUTA.

"ed" and "unmarried," which follows, is pertinent as declaratory of the order of succession [and not as a limitation of the preceding general term.*]

24. A passage of YA'JNYAWALCYA cited.

24. Thus YA'JNYAWALCYA says, "The separate property "of a childless woman married in the form "denominated *Bráhma* or in any of the "four [unblamed forms of marriage] goes "to her husband: but if she leave pro-"geny, it will belong to her daughter: and in other forms "of marriage, [as the A'SURA, &c.,] it goes to the father "[and mother, on failure of issue."]†

25. And explained.

25. Here, in certain forms of marriage termed *Bráhma, &c.*, what has been received by a woman at the nuptial fire, goes after her death, first to her daughters [not, like property received at any other time but that of her nuptials, to her sons as well as her daughters‡]. Again, the right devolves first on the maiden daughter [conformably with the text above cited;§] if there be none, it descends to the betrothed daughter; or for want of such, it goes to a married daughter [including even a barren or a widowed one:||] or, on failure of all daughters, it devolves on the son. For the husband's right of succession is relative to property of a wife who leaves no issue whatever.

26. The married daughter's right is even hinted in a former text. (§ 3.)

26. The right of the married daughter, too, on failure of the unaffianced one and the rest, has been hinted by VRĬHASPATI using the term "unaffianced." (§ 3.)

27. The preceding passage (§ 24) does not relate to woman's property in general; but to nuptial presents in parti-

27. It should not be alleged, that this text of [YA'JNYAWALCYA¶ above cited, §24] does not relate exclusively to wealth received at nuptials; but is applicable to any property, whether obtained then or at any other time, and appertaining to a woman espoused by such forms of marriage. For the

Annotations.

24. *Or in any of the four.*] Including that denominated *Bráhma*. in any of five unblamed forms of marriage. S'RÍCRĬSHN'A.

27. *Any property appertaining to a woman espoused by such forms.*] The author is here opposing the doctrine of the *Mitácshara*; as is remarked by S'RÍCRĬSHN'A.

* ACHYUTA. † YA'JNYAWALCYA, 2. 146. ‡ S'RÍCRĬSHN'A.
§ ACHYUTA and S'RÍCRĬSHN'A. || CHU'DA'MAN'I. ¶ S'RÍCRĬSHN'A, CHU'DA'MAN'I, &c.

cular, given at marriages celebrated in certain forms.

preceding passage,* [which is declaratory of a brother's right of succession,†] would have no pertinency, [since, even in that case, the husband or the father would inherit under the text in question :‡] and it would disagree with MENU ; for he says, " It is admitted, that the property " of a woman married by the ceremonies called *Bráhma*, " *Daiva, Arsha, Gándharba* and *Prájápatya*, shall go to her " husband, if she die without issue. But her wealth, given " to her on her marriage in the form called *A'sura* or either " of the other two (*Rácshasa* and *Pais'ácha*,) is ordained, " on her death without issue, to become the property of her " mother and of her father."§ Here, the subsequent terms, " wealth given to her," are understood in the preceding sentence. Therefore, by thus connecting the terms, " wealth given to her at the nuptial ceremonies, &c.," the text appears to relate to property received at her marriage, and not generally to any property whatever.

28. This interpretation is confirmed by a passage of YAMA.

28. So YAMA, saying " Wealth, which is given at the " marriages called *A'sura*, &c., [is acknow- " ledged to belong to the parents, if the " woman die without issue,"‖] appears to intend nuptial presents exclusively ; that is, wealth which is given while the marriage ceremony lasts, having been commenced but not being finished.

29. The texts do not relate to any property belonging to a woman married in such a form ; but to property given to her at a marriage celebrated in such form.

29. It must not be argued, that the denominations of *Bráhma*, &c., regard the woman [who is married by such ceremonies ;¶ and that the text concerns any property belonging to her ; the designations being relative to the person :**] because there is no other rule provided for the descent of a childless woman's property received by her before her nuptials, or after them. For the rule of succession, in the case of property received before or after marriage, will be fully stated, conformably with express laws.

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* YA'JNYAWALCYA, 2. 145. Vide Sect. 3. § 10. † S'RÍCRÍSHN'A, &c.
‡ S'RÍCRÍSHN'A and ACHYUTA. § MENU, 9. 196 & 197. ‖ MAHE'S'WARA.
¶ MAHE'S'WARA. ** ACHYUTA.

SECTION III.

Succession to the separate property of a childless woman.

1. Succession to a childless woman.

1. THE heirs of the property of a woman who dies childless are next propounded.

2. A passage of YA'JNYAWALCYA again cited.

2. "The separate property of a childless woman mar-" ried in the form denominated *Bráhma*, or " in any of the four [unblamed forms of " marriage,] goes to her husband."*

3. And expounded.

3. The four forms of marriage, at the head of which is that called *Bráhma*, are here intended. Those four are the *Daiva*, *A'rsha*, *Prájápatya*, and *Gánd'harba*. With the *Bráhma*, they make five. For MENU has specified five: namely, "the " ceremonies called *Bráhma*, *Daiva*, *A'rsha*, *Gánd'harba* and " *Prájápatya*."† Wealth, which has been received by a woman while her marriage in any of those forms is celebrated, devolves on her husband, if she die without issue. Here issue signifies progeny.

The nuptial presents are inherited by the husband in some cases.

4. A different interpretation refuted.

4. It is not right to interpret the text as signifying, that any property of whatever amount, which belongs to a woman married by any of those ceremonies termed

Annotations.

3. *Progeny.*] Intending the giver of a funeral oblation. CHU'DA'MAN'I.

4. *For the terms employed in the text indicate time.*] To make the reasoning in this place more intelligible, it is necessary to remark, that, in the original of the passage under consideration, the word has a termination (that of the seventh or locative case,) which properly denotes the site or place of the act. Now a wedding cannot strictly be the site of the gift; and therefore,

* YA'JNYAWALCYA, 2. 146. Vide Sect. 2. § 24. † MENU, 9. 196. Vide Sect. 2. § 27.

Bráhma, &c., whether received by her before or after her nuptials, devolves wholly on her husband by her demise. For the terms employed in the text (§ 2), signifying 'at 'marriages in the form denominated *Bráhma*, &c.,' indicate time : and, if the words *Bráhma*, &c., [in MENU's text :*] intended the woman [who is espoused in such form,†] those terms [as expressive of the married person‡] would have been exhibited in the singular number and sixth or relative case : for the pronoun, denoting the woman, is exhibited in that case and number, in the [subsequent] passage ; " But her wealth, given to her on her marriage, &c."§ If the time of nuptials be indicated, the term has the metaphorical sense from relation to [time ||] present. But, if the woman be intended, it has the metaphorical meaning from relation to the past ceremony of marriage. Now this, being a less approved mode of construction, is not the proper one. Neither is it true, that the terms *Bráhma*, &c., do signify the woman who is espoused ; for they are used by MENU and the rest as importing the marriage celebrated in such form. Thus MENU, having premised these words " Now " learn compendiously the eight forms of the nuptial cere- " mony ;"¶ enumerates " the ceremony of *Bráhma*, of the " *Dévas*, of the *Rishis*, of the *Prajápatis*, of the *A'suras*, " &c."**. So NA'REDA says, " Eight forms of marriage are " ordained for the perfecting of the several tribes : the " first of them is the *Bráhma*."†† VISHN'U in like manner says, " Marriages are of eight sorts, the *Bráhma*, the " *Daiva*, &c."‡‡

Annotations.

conformably with the syntax of the language, the author considers time to be indicated as a secondary or metaphorical meaning of the inflected word. He supports his interpretation by an argument which may be thus stated :- the relation of the marriage to the time of its celebration renders this, metaphorically, the site of the donation, and that is an easier construction than making the moral relation, which results from the celebration of a marriage, the site of the eventual succession.

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* Vide Sect. 2. § 21.
† S'RÍCRISHN'A.
‡ MAHE'S'WARA.
§ Vide Sect. 2. § 27.
|| S'RÍCRISHN'A.
¶ MENU, 3. 20.
** MENU, 3. 21.
†† NA'REDA, 12. 39.
‡‡ VISHN'U, 24. 18.

5. VIS'WARU'PA's exposition of the text confirmed.

5. Therefore, the observation of VIS'WARU'PA, that the text relates to woman's property received at the time of the nuptials, should be respected.

6. In other cases, the mother inherits the nuptial presents; and, in her default, the father.

6. But a woman's property, received at a marriage in the form called *A'sura* and the like, her mother may take on her demise, though her husband be living; and, on failure of the mother, the father. For that order of succession results from the text, "Her "wealth is ordained to become the property "of her mother and of her father."* If then joint succession were intended, the author would have said, "become the property of her two parents." And, as the father's right of inheritance is declared to be on failure of the mother in the case of a maiden's property, the same is fitting in this instance also.

7. A passage of BAUD'HA'YANA on succession to a maiden's property

7. Accordingly BAUD'HA'YANA says, "The wealth "of a deceased damsel let the uterine "brethren themselves take. On failure of "them, it shall belong to the mother ;- or, "if she be dead, to the father."

8. is sufficient on the subject.

8. The property of a maiden has been thus explained, [and the subject will not be resumed under a distinct head.†]

9. The brother does not inherit preferably the nuptial present, as he does a maiden's property.

9. It must not be argued, that, in this case [of wealth received at nuptials,‡] as in that of a maiden's property, the brother has the prior right. For no text ordains it: and the succession of the mother and father only [not the brother §] is expressly declared.

10. But he does inherit presents received by her after marriage; gifts of kindred, and

10. But wealth received by a woman after her marriage, from the family of her father, of her mother, or of her husband, goes to her brothers, [not to her

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Annotations.

6. *Her mother may take on her demise.*] It must be consequently understood, that the term father, in a passage of YA'JNYAWALCYA, "In other forms "of marriage, it goes to the father,"¶ signifies parents; one term only being retained of the phrase 'father and mother.' S'RÍCRÍSHN'A and ACHYUTA.

10. *Received after her marriage from the family of her father, &c.*] Pre-

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* Vide Sect. 2. § 27. † S'RÍCRÍSHN'A and ACHYUTA. ‡ Ibid. § Ibid. ¶ Sect. 2. § 24

her fee (s'ulca) according to YA'JNYAWALCYA.

husband ;*] as YA'JNYAWALCYA declares: "That which has been given to her by her "kindred, as well as her fee or gratuity, "and any thing bestowed after marriage, her kinsmen "take, if she die without issue."†

11. Explanation of the text.

11. Given by her kindred.] Presented to her by her father or mother [during her maidenhood. ‡] Hence [since the words "given by kindred" intend given by the father and mother ;§] their sons, who are her brothers, are the kinsmen here signified.

12. The interpretation is supported by a passage of CA'TYA'YANA concerning immovables.

12. That is confirmed by VRĬDD'HA CA'TYA'YANA, who says "Immovable property, which has "been given by parents to their daughter, "goes always to her brother, if she die "without issue." For it appears, that the brother's right of succession is founded simply on her leaving no issue [which is the case equally of a maiden, as of a childless wife.||]

13. In general, as affirmed by VI'S'WARU'PA, the brother inherits a woman's property.

13. The remark of VĬS'WARU'PA, that property of a childless woman married by any form of nuptials, from that of *Bráhma* to that of the *Pis'áchas*, (as hinted by the term "always,") goes to her brother, should therefore be respected.

14. Since he inherits the immovables, he must *a fortiori* succeed to movables.

14. Under the term "immovables," the same must be true of other property [such as described in the passage of YA'JNYAWALCYA above cited ;¶] by the argument *a fortiori*, exemplified in the loaf and staff.**

Annotations.

perty intended by the term *Anwád'héya* or 'gift subsequent' is here described by circumlocution. CHU'DA'MAN'I and S'RÍCRĬSHN'A.

11. *Their sons, who are her brothers, are the kinsmen here signified.*] Conformably with the etymology of the term *bánd'hava* kinsmen, or offspring of *(band'hu)* kindred, explained as signifying her father and mother. S'RÍCRĬSHN'A and ACHYUTA.

* S'RÍCRĬSHN'A, &c. † YAJNYAWALCYA, 2. 145. ‡ CHU'DA'MAN'I and S'RÍCRĬSHN'A. § CHU'DA'MAN'I. || S'RÍCRĬSHN'A and CHU'DA'MAN'I. ¶ CHU'DA'MAN'I. ** Ch. 2. § 25.

15. By the phrase "given by her kindred" (§ 10) is signified that which was given to her by her parents during her maiden state. For anything received by her, subsequently to her nuptials, is comprehended under the denomination of *(anwád'héya)* 'gift subsequent:' and either the husband, or the parents, inherit that which was presented at the time of the wedding.

15. Presents given to the woman, when a maiden, are included in the preceding text (§ 10).

16. CA'TYA'YANA describes a gift subsequent: "What "has been received by a woman from the "family of her husband, and at a time posterior to her marriage, is called a gift "subsequent; and so is that which is similarly received "from the family of her kindred."*

16. CA'TYA'YANA's definition of a gift subsequent.

17. From the family of her husband.] From her father-in-law and the rest. From the family of her kindred.] From that of her father and mother.

17. Exposition of the text.

18. The same author gives another definition: "Whatever is received by a woman after "her nuptials, either from her husband, or "from her parents, through the affection of "the giver, BHRIGU pronounces to be a gift subsequent."

18. Another definition of gift subsequent.

19. He likewise explains the fee or perquisite *(S'ulca.)* "Whatever has been received, as a price, "of workmen on houses, furniture and carriages, milking vessels and ornaments, is "denominated a fee."

19. Explanation of fee or perquisite by the same authority.

Annotations.

19. *Received of workmen.*] The passage is translated conformably to the interpretation of JÍMU'TA-VA'HANA and his commentators, S'RÍCRÍSHN'A, ACHYUTA, and MAHE'S'WARA: and it seems to have been understood in the same sense by the authors of the *Retnácara* and *Viváda-chandra.* But it is difficult to reconcile this meaning with the construction of the sentence. The passage is accordingly explained in quite a different sense by the authors of the *Smrĭtichandrica, Madanaratna,* &c., 'The price of house, furniture, carriages, &c., received in trust 'for the bride, is her fee or perquisite.' There is a variation in the reading of the text adapted to these different interpretations. JÍMU'TA-VA'HANA reading *carmin'ám* 'workmen;' and the *Smrĭtichandrica, &c., carman'ám,* 'works.'

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* Cited before: Section 1. § 2.

20. Interpretation of the passage.

20. What is given to a woman by artists constructing a house or executing other work, as a bribe to send her husband or other person [of her family] to labour on such particular work, is her fee. It is the price [of labour;] since its purpose is to engage [a labourer.]

21. A different explanation by VYA'SA.

21. Or a fee is that which is described by VYA'SA, "What [is given] to bring the bride to "her husband's house, is denominated her "fee." That is, what is given by way of bribe or the like to induce her to go to the house of her husband.

22. Either way, property of such description occurs under every form of marriage.

22. This fee, [as described in both the passages above cited,*] occurs indiscriminately in any form of marriage, whether that termed *Bráhma*, or another. Such, or any similar property of a childless woman, her brothers inherit.

23. The term *(S'ulca)* is not employed in its sense of price, as intending a gratuity for the purchase of a bride: such as is given at an *A'sura* marriage.

23. But it does not intend a gratuity *(S'ulca)* presented to damsels at marriages called *A'sura* and the rest. For that gratuity is restricted to the particular form denominated *A'sura* [and does not occur in the rest.†] Accordingly it is said "The *A'sura* marriage is "grounded on the receipt of wealth; the "*Gánd'harba*, on reciprocal connexion; the "*Rácshasa*, on seizure in war; and the "*Pais'ácha* is where the bride is obtained by fraud."‡

Annotations.

20. *It is the price of labour.*] *S'ulca* properly signifies price: though it has become necessary to translate it fee, perquisite, or gratuity.

21. *What is given to bring the bride.*] CHU'DA'MAN'I notices a variation in the reading of VYA'SA's text; *ánítam* for *ánétum*, "what is brought [while the "bride is going] to her husband's house;" instead of "what [is given] to bring "her to her husband's house."

22. *Occurs indiscriminately in any marriage.*] The term fee does not here denote the gratuity *(S'ulca)* received at an *A'sura* marriage. (Vide § 23.) S'RÍCRÍSHN'A.

23. *It does not intend a gratuity at marriages called* A'sura.] The author here refutes the ancient doctrine as set forth by CHAN'D'E'S'WARA. S'RÍCRÍSHN'A.

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* CHU'DA'MAN'I. † S'RÍCRÍSHN'A &c. ‡ YA'JNYAWALCYA, 1. 61. Vide MENU, 331—34.

24. A proposed restriction of the text (§ 10) to the case of *A'sura* and similar marriages refuted.

24. Hence, since there is no gratuity at the *Rácshasa* marriage, nor at the other [viz., the *Pais'ácha* marriage,*] the conclusion, deduced from association with nuptial gratuity, that only such property goes to the brother as was received under the *A'sura* and other similar marriages, must be rejected : as also because that is not the separate property of the woman ; for only wealth received by the father or other person [who gives the girl in marriage] is denominated a gratuity. Thus MENU says, " Let no father, who is wise, receive a gratuity " however small, for giving his daughter in marriage ; since " the man, who through avarice, takes a gratuity, is a seller " of his offspring."† Father is here a general expression [intending the person who gives away the damsel.‡] Therefore, a brother, or any other person, accepting a present [for giving a girl in marriage,] is a receiver of a gratuity. Consequently, a gratuity *(S'ulca)* is that which is accepted by the father or other person [so disposing of the damsel.]

25. And the restriction of it to the single case of an *A'sura* marriage.

25. Hence [since the gratuity belongs to the giver of the damsel, and not to the damsel herself,§] the argument is refuted, which has been thus proposed ; that, has a woman's separate property received in the form of a gratuity *(S'ulca)* is possible only in an *A'sura* marriage, therefore the gifts of kindred and a gift subsequent, which are specified in the same passage (§ 10), shall also be inherited by the brother, provided they are relative to an *A'sura* marriage.

26. The brother is heir to the fee or perquisite, under every form of marriage.

26. But, since property, received as a fee or perquisite *(S'ulca)* in the manner described (§ 19 and 21), is possible under every form of marriage, the brother is heir in all such instances ; conformably with the text [of YA'JNYAWALCYA.||] For it contains no restriction [to any particular form of marriage,¶ nor to that called *A'sura* in particular.**]

27. A passage of GAUTAMA confirms this.

27. Thus the text of GAUTAMA also conveys the same import with that of CA'TYA'YANA. (§ 12.) It is as follows : " The sister's fee belongs " to the uterine brothers ; after them, it

* CHU'DA'MAN'I. † MENU, 3. 51. ‡ S'RÍCRISHN'A and ACHYUTA. § S'RÍCRISHN'A. || CHU'DA'MAN'I. Vide § 10. ¶ MAHE'S'WARA. ** S'RÍCRISHN'A.

"goes to the mother ; and next to the father. Some say, "before her."*

28. Exposition of the passage.

28. The meaning of the passage is this: in the first place that property goes to her brothers of the whole blood. But, on failure of them, it belongs to the mother. *In her default, it devolves on the father.*† Some say before her. This is stated as the doctrine of others.

29. On failure of brothers, the gifts of kindred go to the mother; or to the husband.

So CA'TYA'YANA ordains.

29. Therefore, the property goes first to the whole brothers; if there be none, to the mother; if she be dead, to the father: but, on failure of all these, it devolves on the husband. Thus CA'TYA'YANA says, "That, which has "been given to her by her kindred, goes, "on failure of kindred, to her husband."

30. Explanation of the text.

30. By saying "on failure of the kindred," [or of the father and mother,‡] the failure of brothers is likewise indicated. For, since the parent's right of succession is in default of brothers, [the failure of the preferable claim] must be concluded by the argument *a fortiori* exemplified in the case of the loaf and staff.§

Annotations.

27. *And next, to the father.*] JÍMU'TA-VA'HANA reads and interprets this passage of GAUTAMA differently from other compilers, by whom it is cited. The clause "and next, to the father," which S'RÍCRÍSHN'A reads in JÍMU'TA-VA'HANA's quotation, is not found in GAUTAMA's text as exhibited in his Institutes; nor is it noticed by his scholiast; nor inserted in ancient quotations of this passage; nor read by ACHYUTA in JÍMU'TA-VA'HANA's text. The scholiast, with HELA'YUD'HA, CHAN'D'E'S'WARA and others, expounds this passage 'The sister's gratuity be-'longs to the uterine brothers, after [the death of] the mother; some say 'before [her demise:'] an interpretation, which, as ACHYUTA observes, is rejected by JÍMU'TA-VA'HANA.

28. *Some say before her.*] Some hold, that it devolves on the father next after brothers; and on the mother after him. S'RÍCRÍSHN'A.

HELA'YUD'HA's interpretation, 'Some hold, that it devolves on the brothers, 'though the mother be living,' is thus set aside. ACHYUTA.

29. *Given to her by her kindred.*] Given by her father and mother. ACHYUTA.

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* GAUTAMA. 23. 28. &c.

† This sentence is wanting in some copies of JÍMU'TA-VA'HANA.

‡ RAGHUNANDANA, &c.

§ Vide C. 2. § 25.

31. On failure of heirs abovementioned, collaterals inherit.

A passage of VRĬHASPATI cited,

31. On failure of heirs down to the husband, this rule again is provided, which VRĬHASPATI thus delivers, "The mother's sister, the maternal "uncle, the father's sister, the mother-in-"law, and the wife of an elder brother, are "pronounced similar to mothers. If they "leave no issue of their bodies, nor son "[of a rival wife,] nor daughter's son, nor son of those "persons, the sister's son and the rest shall take their pro-"perty."

32. And explained.

32. Both son and daughter are here signified by the terms "issue of the body." For they bar every other claimant. By "son" is meant the child of a rival wife. For a passage of law expresses, "If, among all the wives of the same husband, "one bring forth a male child, MENU has declared them all, by "means of that son, to be mothers of male issue."* Nor is the term "son" an epithet of "issue of the body:" for it would be superfluous; and the sister's son or other remote heir would have the right of succession, though a son [or a grandson†] of a contempory wife be living.

33. The daughter's son succeeds on failure of the daughter and of male issue.

33. If there be no legitimate son or daughter, nor a grandson in the male line, nor a son of a rival wife, the right of succession devolves on the daughter's son.

Annotations.

32. *The child of a rival wife.*] The son of such a wife; including also the sister of such son: for the gender is here employed indefinitely; and, by means of her offspring, she becomes the giver of funeral oblations to the husband of the woman and his ancestors to the third degree. S'RÍCRĬSHN'A.

Including also adopted sons. ACHYUTÁ, &c.

33. *Nor a grandson, nor a son of a rival wife, the succession devolves on a daughter's son.*] This passage is censured by S'RICRĬSHN'A; who shows by very satisfactory reasoning, that the daughter's son ought to inherit before the son of a contemporary wife. ACHYUTA considers the reading of the text to be questionable; and MAHE'S'WARA pronounces it to be spurious. He also rejects the words "nor a grandson" as unnecessary and improperly introduced in this place. RAGHUNANDANA, in the *Dáyatatwa*, copying JÍMU'TA-VA'HANA's argument, [illegible] this passage altogether; and the author of the *Víramitródaya* has substituted one of quite different import.

* MENU, 9. 183. † ACHYUTA and MAHE'S'WARA.

34. Nor the son of the daughter's son.

34. By the pronoun in the phrase "son of those persons" (§ 31) the woman's own issue and the child of a rival wife are signified. Therefore, their sons have a right to inherit; not the son of a daughter's son also, for he is excluded from the oblation of food at obsequies.

35. That passage does relate to the right of succession.

35. For want then of sons and other linear heirs as here specified, and in default of brothers or other preferable claimants, including the husband, the inheritance passes to the sister's son and the rest, although kinsmen, as the father-in-law, the husband's elder brother, or the like, be living. For the text (§ 31) bears no other import; and the chief purpose of indicating, under the head of inheritance, the competency to present funeral oblations, as is done by describing the women as similar to mothers, and certain persons as standing in the relation to them of sons, is to suggest the right of succession to their property.

36. But not to the order of succession.

36. Hence, since the text enumerates "sister's son," &c., if the order of succession consequently be, first the sister's son, then the husband's sister's son, next the child of the husband's younger brother, afterwards the child of the husband's elder brother, then the son of the brother, after him the son-in-law, and subsequently the younger brother-in-law, the right would devolve last of all on the younger brother of the husband, contrary to the opinion and practice of venerable persons. Therefore, the text is propounded, not as declaratory of the order of inheritance, but as expressive of the strength of the fact, [namely, of the benefits conferred.*] Thus it is declared by MENU, under the head of inheritance, "To three ancestors must

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Annotations.

34. *By the pronoun . . . . . . the woman's own issue and the child of a rival wife are signified.*] The pronoun refers not to the nearest term "daughter's son," but to the remote terms "issue of the body" and "son of a contemporary wife." *Víramitródaya.*

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* S'RÍCRISHN'A and CHU'DA'MAN'I.

Passages of MENU, YA'JNYAWALCYA, and S'A'TA'TAPA show succession in right of benefits conferred.

"water be given at their obsequies; for "three is the funeral oblation of food or"dained: the fourth is the giver of obla"tions; but the fifth has no concern with "them."* In like manner YA'JNYAWALCYA shows succession to property in right of the funeral oblation: "Among these [sons of various descriptions,] the "next in order is heir, and giver of oblations, on failure of "the preceding."† The son's preferable right too appears to rest on his presenting the greatest number of beneficial oblations, and on his rescuing his parent from hell. And a passage of *Vrĭdd'ha* S'A'TA'TAPA expressly provides for the funeral oblations of these women: "For the wife of a ma"ternal uncle or of a sister's son, of a father-in-law and "of a spiritual parent, of a friend and of a maternal "grandfather, as well as for the sister of the mother or of "the father, the oblation of food at obsequies must be "performed. Such is the settled rule among those who "are conversant with the *Védas.*"

37. The order of succession is as follows:

First, the husband's younger brother.

37 This then is the order of succession, according to the various degrees [of benefit to the owner of the property‡] from the oblation of food at obsequies. In the first place, the husband's younger brother is entitled to the woman's property; for he is a kinsman *(Sapin'd'a,)* and presents oblations to her, to her husband, and to three persons to whom oblations were to be offered by her husband. After him, the son either of her husband's elder or of his younger brother, is heir to the separate property of his uncle's wife, for he is a kinsman, and presents oblations to her, to her husband, and to two persons to whom oblations were to be offered by her husband. On failure of such, the sister's son, though he be not a kinsman *(Sapin'd'a,)* inherits the separate property left by his mother's sister, because he presents oblations to her, and to three persons, (her father and the rest,) to whom oblations would have been offered by her son. In default of him, the son of her husband's sister (for it is reasonable, since the husband has a weaker claim than the son, that persons claiming under them should

Then the son of the brother-in-law.

Next the sister's son.

Afterwards the husband's sister's son.

* MENU. 9. 186. † YA'JNYAWALCYA. 2. 133. ‡ MAHE'S'WARA.

have similar relative precedence;) is heir to the property of his uncle's wife; because he presents oblations to three persons to whom they were to be offered by her husband, and also presents oblations to her and to her husband.

Then the brother's son.

Lastly, the son-in-law.

On failure of him, the brother's son is the successor to his aunt's property, for he presents oblations to the father, to her grandfather, and to herself. If there be no nephew, the husband of her daughter is heir to his mother-in-law's property, since he presents oblations to his mother-in-law and father-in-law.

38. The text (§ 31) indicates heirs, not their order of succession.

38. This order of succession must be assumed: and the mention of "a sister's son" and the rest (§31) was intended merely for an indication of the heirs, without specifying the order in which they succeed.

39. If those fail, the husband's father, elder brother, &c., inherit.

39. Again, on failure of these six, it must be understood, that the succession devolves on the father-in-law, the husband's eldest brother and the rest, according to their nearness of kin [the nearest *Sapin'd'a* being the heir.*]

40. The failure of these heirs was not implied in the text.

40. It must not be supposed, that this text (§ 31) is applicable where a failure of kinsmen (*Sapin'd'a*) exists: for, in this chain of successors, the husband's younger brother, and his son, and the son of the husband's elder brother, have been specified; and the husband's father and elder brother, who are nearer of kin, have been omitted.

41. A contrary practice must be rejected as unauthorized.

41. Therefore, the practice [of preferring the father-in-law to the younger brother-in-law,† or of regulating the succession in the order specified in the passage above cited, § 31‡] which has been introduced for want of comprehending the text [of VRIHASPATI, § 31§ or those of MENU and YA'JNYAWALCYA,||] and of understanding the true sense of the law, must be rejected as destitute of reason and authority, by those who [like us¶] submit to demonstration.

42. Conclusion.

42. Thus has succession to the separate property of a childless woman been explained.

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* MAHE'S'WARA. † MAHE'S'WARA. ‡ S'RÍCRISHN'A

§ MAHE'S'WARA || S'RÍCRISHN'A. ¶ MAHE'S'WARA

Annotations.

SUMMARY.

The settled order of succession to the separate property of a woman is as follows:

In the case of property left by a maiden, the right devolves first on the uterine brother; or, if there be none, on the mother; but, if she be dead, on the father.

It is the same in respect of property left by a betrothed damsel, excepting what was given by the bridegroom: for he has a right to whatever he gave.

In regard to the property of a married woman, which was received at her marriage, her maiden daughter has the first claim; and next, a betrothed one: but, on failure of both these, her married daughters, who have, or are likely to have, male issue, inherit together; or, on failure of either of them, the other takes the succession: if there be none of either description, the barren and the widowed daughters have an equal right; and, on failure of one, the other succeeds. Next the right devolves, in order, on the son, the daughter's son, the son's son, the great grandson in the male line, the son of a contemporary wife, her grandson and her great grandson in the male line, with this difference, that, according to the author of the work (JÍMU'TA-VA'HANA,) the right of the daughter's son follows that of the contemporary wife's son.

In the next place, if the property were received at the time of nuptials celebrated in one of the five forms denominated *Bráhma*, &c., the order of successors is husband, brother, mother, and father. But, if it were received at nuptials in one of the three forms called *A'sura*, &c., the order is mother, father, brother, and husband.

Then the husband's younger brother; after him, the son of the husband's younger brother, and the son of his elder brother; next, the sister's son; afterwards, the husband's sister's son; then the brother's son; after him, the son-in-law; next, the father-in-law; subsequently, the elder brother-in-law. In the next place, kinsmen allied by funeral oblations *(sapin'd'as,)* in the order of proximity; after them, kinsmen connected by family *(saculyas;)* and, lastly, such as are allied by similar oblations of water *(samánódacas.)*

In the case of property given by the father at any other time but the wedding, a maiden daughter succeeds in the first instance; next, a son; then a daughter who has, and one who is likely to have, male issue; after them, the daughter's son, the son's son, the great grandson in the male line, the son of a contemporary wife, and her grandson and great grandson in the male line: next to these, the barren and widowed daughters inherit together: afterwards the succession proceeds as before described in the case of property received at nuptials denominated *Bráhma*, &c.

But, in the instance of property not received at a wedding, and other than such as is given by the father, the son and unmarried daughter inherit together; or, on failure of both of them, the daughters, who have, or may have, male issue; and, afterwards, the son's son, the daughter's son, the great grandson in the male line, the son of the contemporary wife, her grandson and great grandson in the male line, are rightful claimants in succession; next to these, the barren and widowed daughters inherit together: and lastly, the order is, as before, the same with that of property received at *Bráhma* nuptials. S'RÍCRÍSHN'A.

CHAPTER V.

Exclusion from Inheritance.

1. In the next place, persons incompetent to inherit are specified, for the purpose of making known, by the exception, competent heirs. On this subject A'PASTAMBA says, "All "co-heirs, who are endued with virtue, "are entitled to the property. But he, "who dissipates wealth by his vices, should "be debarred from participation, even "though he be the first born."

1. Who are competent to inherit may be known from the specified exception of such as are not.

A passage of A'PASTAMBA quoted.

2. This passage is read by BA'LO'CA in a confused manner and contrary sense: "But he, who "acquires wealth by his virtuous conduct, "being the eldest son, should be made an "equal sharer with the father." That reading is unauthorized.

2. A different reading of it condemned.

3. So "the heritable right of one who "has been expelled from society, and his

3. Another passage.

Annotations.

3. *Expelled from society.*] Deemed unworthy of intercourse. In consequence of offences, or degradation from class, water is not drunk in company with him. CHU'DA'MAN'I and S'RÍCRISHN'A.

Formally banished, with the ceremony of kicking down a jar of water ...ribed by YA'JNYAWALCYA. ACHYUTA.

A man expelled for crimes is incapable of inheriting.

"competence to offer oblations of food and "libations of water, are extinct."* One, who has been expelled from society, is a person excluded from drinking water in company.

4. Vrĭhaspati excludes the vicious from inheritance.

4. So Vrĭhaspati says, "Though born of a woman of "equal class, a son destitute of virtue is "unworthy of the paternal wealth. It is "declared to belong to such kinsmen, offer-"ing funeral oblations [to the owner,†] as are of virtuous "conduct. A son redeems his father from debt to superior "and inferior beings. Consequently there is no use for one "who acts otherwise. What can be done with a cow which "neither gives milk, nor bears calves? For what purpose "was that son born, who is neither learned nor virtuous? "A son, who is devoid of science, courage, and good "purposes, who is destitute of devotion and knowledge, and "who is wanting in conduct, is similar to urine and excre-"ment."

5. A passage of A'pastamba.

5 A'pastamba says, "A son, who diligently performs "the obsequies of his father and other ances-"tors, is of approved excellence, even though "he be uninitiated: not a son who acts other-"wise, be he conversant even with the whole *Véda.*"

6. A son's right of succession is the reward of benefits conferred on his father; as appears from passages of Menu.

6. "Since a son delivers his father from the hell called "*put*, therefore he is named *puttra* by the "self-existent himself."‡ By this and similar passages, great benefits are stated, as effected by means of a son. His connection with the property is therefore the reward of his beneficial acts. If then he neglect them, how should he have his hire? Accordingly Menu says, "All "those brothers, who are addicted to vice, lose their title "to the inheritance."§

Annotations.

Excluded on account of wickedness, by all his kinsmen, from the oblation of food and libation of water. Mahe's'wara.

4. *Destitute of devotion and knowledge.*] Some copies of Jímu'ta-va'hana read generosity *(dána)* in place of knowledge *(jnyána* or *vijnyána,)* which is the reading of other copies, as well as of the quotations occurring in various compilations.

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* Cited in the *Víramitródaya* as a passage of A'pastamba; but, in the *Vivádachintámani* and *Smrĭti-sára*, it is referred to S'anc'ha; and in the *Retnácara*, *Smrĭtichandrica*, &c., to S'anc'ha and Lic'hita.

† Mahe's'wara. ‡ Menu, 9. 138. Vishn'u, 15. 43. Vide Infra. C. 11 [Sect: 1. § 31

§ Menu, 9. 214.

7. So [the same author:] "Impotent persons and "outcasts are excluded from a share of the "heritage; and so are persons born blind "and deaf; as well as madmen, idiots, the "dumb, and those who have lost a sense [or a limb."*]

7. MENU enumerates disqualified persons.

8. The impotent person is described by CA'TYA'YANA: "that man is called impotent, whose urine "froths not, whose feces sink in water, and "whose virile member is void of erection "and of semen."

8. CA'TYA'YANA defines impotency.

9. The term 'born' is connected in construction with the words 'blind' and 'deaf.' One, who is incapable of articulating sounds, is dumb. An idiot is a person not susceptible of instruction.

9. Exposition of the text of MENU, (§7.)

10. YA'JNYAWALCYA says, "An outcast and his issue, "an impotent person, one lame, a madman, "an idiot, a blind man, a person afflicted "with an incurable disease, [as well as "others similarly disqualified,] must be maintained; ex-"cluding them, however, from participation."† One, who cannot walk, is lame.

10. A similar passage of YA'JNYAWALCYA.

11. Although they be excluded from participation, they ought to be maintained, excepting, however, the outcast and his son. That is taught by DE'VALA: "When the father is "dead [as well as in his life-time‡] an impo-"tent man, a leper, a madman, an idiot, a "blind man, an outcast, the offspring of an "outcast, and a person wearing the token "[of religious mendicity,] are not compe-"tent to share the heritage. Food and raiment should be "given to them, excepting the outcast. But the sons of "such persons, being free from similar defects, shall obtain

11. Those debarred from inheriting should be maintained; excepting the outcast and his son.

A passage of DE'VALA cited and explained.

Annotations.

7. *Those who have lost a sense or a limb.*] Literally an organ; explained by some a sense as that of smelling, or of sight, &c., but by others a limb, as the hand, foot, and so forth.

10. *As well as others.*] This is a part of the text as read by the *Mitácshara, Smrĭtichandrica* and *Retnácara*. But JÍMU'TA-VA'HANA and VA'CHESPATI MIS'RA read *arta* 'afflicted,' in place of *ádya* 'others.'

11. *Excepting the outcast and his son.*] Meaning a son begotten after the degradation of the father. S'RÍCRĬSHN'A.

* MENU, 9. 201. † YA'JNYAWALCYA, 2. 141. ‡ *Smrĭtichandrica.*

"their father's share of the inheritance." A person wearing the token of mendicity is one who has become a religious wanderer or ascetic.

12. A son born after the degradation of his father is an outcast.

Baud'ha'yana cited.

12. By the term outcast, his son also is intended; for he is degraded, being procreated by an outcast. That is confirmed by Baud'ha'yana, who says, "Let the co-heirs support with "food and apparel those who are incapa- "ble of business, as well as the blind, "idiots, impotent persons, those afflicted "with disease and calamity, and others who are incom- "petent to the performance of duties: excepting, however, "the outcast and his issue."

13. Na'reda's enumeration of disqualified persons.

13. On this subject, Na'reda says, "An enemy to "his father, an outcast, an impotent per- "son, and one who is addicted to vice [or "has been expelled from society,] take no "shares of the inheritance even though they "be legitimate: much less, if they be sons of the wife by "an appointed kinsman."*

14. Ca'tya'yana specifies others.

14. Ca'tya'yana ordains, that "The son of a woman "married in irregular order; and begotten "on her by a kinsman, is unworthy of the "inheritance; and so is an apostate from "a religious order."

Annotations.

Wearing the token of mendicity.] The term *lingí* is understood by Jímu'ta-va'hana as signifying a person who has entered into a religious order, of which he wears the symbol. But other compilers (as the authors of the *Retnácara, Smrĭtichandrica, &c.,*) explain it hypocrite and impostor, or a sectary and heretic.

13. *One who is addicted to vice.*] So the term, as read by Jímu'ta-va'hana, is explained by his commentator Mahe's'wara. In the *Pracás'a* it is read *upapátací* instead of *aupapática*, and is similarly explained, according to the quotation in the *Retnácara*. But the reading, which is there preferred, as well as in the *Calpataru*, is *apapátrita*, signifying 'expelled from society for heinous crimes;' and the word is written *avapátaca* in the *Smrĭtichandrica*, but interpreted in the same sense. Raghunandana reads, as Jímu'ta-va'hana, *aupapática*, and expounds it 'one stained with sins.'

14. *Son of a woman married in irregular order, and begotten on her by a kinsman.*] This verson is conformable to Jímu'ta-va'hana's interpretation (§ 15), which is copied in the *Víramitródaya*. But in the *Smrĭtichandrica, Retnácara* and *Chintáman'i*, the members of the sentence are separated: "The son of a woman married in irregular order is unworthy of the inhe- "ritance; and so is the son of a woman espoused by her kinsman, as well as "an apostate from a religious order."

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* Na'reda, 13. 21.

15. If a woman of superior tribe be espoused after marrying one of inferior class, both marriages are contrary to regular order. The son of either of these women, being *cshétraja*, or issue of the wife, procreated by a kinsman authorized to raise up issue to the husband; is unworthy of the inheritance. But a son begotten by the husband himself, being of the same tribe, on his wedded wife espoused in irregular order, is heir to the estate: so likewise is a son begotten by the husband on a wife dissimilar in class but espoused in regular gradation.

15. Interpretation of his text.

16. That is declared by CA'TYA'YANA: "But the son "of a woman married in irregular order, "may be heir provided he belong to the "same tribe with his father: and so may "the son of a man, belonging to a different "[but superior*] tribe, by a woman espoused in the regular "gradation. The son of a woman married to a man of in-"ferior tribe, is not heir to the estate. Food and raiment "only are considered to be due to him by his kinsmen. But, "on failure of them, he may take the paternal wealth. The "kinsmen shall not be compelled to give the wealth receiv-"ed by them, not being his patrimony."

16. A further passage of CA'TYA'YANA.

Annotations.

Is unworthy of the inheritance.] The *Retnácara* and *Chintáman'i* read *na rict'han téshu carhichit*, "the inheritance never goes to them," instead of *na rict'han téshu chárhati*, "the inheritance is not fit to go to them:" that is, as observed in the *Smrïtichandrica*, "they are unworthy of it."

15. *Begotten on a wife dissimilar in class, but espoused in regular gradation.*] Begotten by a man of superior tribe on a woman of inferior class. S'RÍCRÏSHN'A.

16. *Food and raiment only.*] This is JÍMU'TA-VA'HANA'S reading, *grásách'hádana-mátram.* But the *Smrïtichandrica* and *Retnácara* read *grásách'hádanam atyantam*, "food and raiment for life."

Not being his patrimony.] The commentators, S'RÍCRÏSHN'A and ACHYUTA, state another reading in the first instance; *swapitryam* "[their] own patri

* CHU'DA'MAN'I.

17. Disqualified persons may have issue.

17. A possibility exists of an impotent man, and the rest as above enumerated (§ 7), espousing wives. "If the eunuch and the rest should "at any time desire to marry, the offspring "of such as have issue, shall be capable of "inheriting."* Issue signifies offspring.

18. An objection answered.

18. It must not be objected, how can they contract marriages, since the eunuch, not being male, is incapable of procreation, and the dumb man and the rest [or those born deaf or blind] are degraded for want of initiation and investiture, because they are unapt for [the preparatory] study? The eunuch may obtain issue from his wife by means of another man; and a person unfit for investiture with the sacerdotal string is not degraded from his tribe for want of that initiation, any more than a *S'údra*.

19. Sons of disqualified persons inherit, if free from similar defects.

19. Therefore the sons of such persons, being either their natural offspring or issue raised up by the wife, as the case may be, are entitled, provided they be free from similar defects, to take their allotments according to the pretensions of their fathers. Their daughters must be main-

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Annotations.

"mony" instead of *apitryam* "not [his] patrimony." They notice, however, this last reading, as one which may have been intended by the author. It is that which the *Smrĭtichandrica*, *Retnácara*, and other compilations exhibit. S'RÍCRĬSHN'A and ACHYUTA deduce the same meaning in both ways of reading the text. But MAHE'S'WARA understands the passage differently: 'The kins- 'men shall not be compelled to give up to him wealth received by them being 'his own patrimony:' they shall not be compelled to share it with him; but he must be maintained by them with food and raiment. CHU'DA'MAN'I, again, follows the other reading, but with a different interpretation: 'The kinsman 'shall not be compelled to give up his father's wealth, received by them, though 'not their patrimony.'

19. *As the case may be.*] A dumb man or the like may have either natural offspring or issue raised up to him by his wife. But the impotent can only have issue so raised. S'RÍCRĬSHN'A.

Allotments according to the pretensions of their fathers.] Such allotment as their fathers would have had if capable of inheriting. ACHYUTA.

Such share as should have belonged to their respective fathers, according as these may be either sons of a *Bráhman'i* woman, or of a *Cshatriya*, or of a woman of another tribe. S'RÍCRĬSHN'A.

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* MENU, 9. 203.

tained until married, and their childless wives must be supported for life. It is so declared by YA'JNYAWALCYA: "Their sons, whether "legitimate or the offspring of the soil, "are entitled to allotments if free from "similar defects. Their daughters also must be maintained "until provided with husbands. Their childless wives, "conducting themselves aright, must be supported: but "such as are unchaste, should be expelled; and so indeed "should those who are perverse."*

This is confirmed by a passage of YA'JNYAWALCYA.

20. Thus it has been explained, who are persons incompetent to inherit.

20. Conclusion.

* YA'JNYAWALCYA, 2. 142 and 143.

13. Since it disagrees with the ordinance, that "he "shall alone take the paternal wealth," (§ 1) it must relate to hereditary property for the reason above mentioned.

13. That must relate to hereditary property.

Annotations.

The particle signifies 'or,' and denotes a regulated alternative. If there be evidence of the income and expenditure, the allotment shall be made, out of the 'visible estate:' if not, it must be grounded on a reference to the amount originally distributed. MAHE'S'WARA.

The visible estate.] The wealth forthcoming. ACHYUTA.

The remainder after allowing for income and expenditure: or that which is forthcoming. MAHE'S'WARA.

13. *For the reason abovementioned.*] That which was stated: 'because 'distribution is authorized when the mother becomes incapable, &c.' Therefore, whether pregnancy were known or not; the partition being illegal, which has been made, of the grandfather's estate, without the mother's being incapable of bearing more children, it ought to be annulled; and the two last-cited passages will relate to the distribution of such property: but the preceding texts of MENU and the rest regard the father's own acquired wealth. The contrary must not be supposed. S'RÍCRISHN'A.

CHAPTER VI.

Effects liable, or not liable, to partition.

SECTION I.

1. The patrimony and joint stock may be divided: as is declared by CA'TYA'YANA.

1. IN the next place, effects which may be divided, and such as are exempted from partition, are here explained. On that subject CA'TYA'YANA says, "What belonged to "the paternal grandfather, or to the father, "and any thing else [appertaining to the "co-heirs, having been] acquired by themselves; must all "be divided at a partition among heirs."

2. Exposition of his text.

2. And any thing else.] Here the particle 'and' is connected, in the sentence, with the term 'themselves;' viz., 'acquired by themselves;' or, as implied by the conjunctive particle, acquired by another person: but his acquisition must have been made through the common property [or else by joint personal labour.*] Such is the meaning.

Annotations.

1. *To the paternal grandfather.*] Meaning any relation in general. S'RI'CRISHN'A and ACHYUTA.

* CHU'DA'MAN'I and S'RI'CRISHN'A.

3. Separate acquisitions are not to be shared: according to MENU and VISHN'U.

3. MENU and VISHN'U declare indivisible what is gained without expenditure. "What a brother has acquired by his labour, without "using the patrimony, he need not give up "without his assent; for it was gained by "his own exertion."*

4. Reason of the exception from participation.

4. Since the patrimony is not used, there is no exertion on the side of the others, through the means of the common property: and, since it was obtained by the man's own labour, there is no corporeal effort on the part of the rest: it is, therefore, the separate property of the acquirer alone; for the phrase "it was gained by his own "exertion," is stated as a reason.

5. It must be an acquisition effected without use of the joint funds: as VYA'SA declares.

5. So VYA'SA ordains: "What a man "gains by his own ability, without relying "on the patrimony, he shall not give up to "the co-heirs; nor that which is acquired "by learning."†

6. Exposition of the text.

6. Since it is expressed in general terms, 'what he 'gains solely by his own ability,' all property, so acquired, being his own, is not common. But, as the gains of science, though obtained by the man's own ability, are shared by parceners equally or more proficient in knowledge, the phrase "nor that which is acquired by "learning," is subjoined for the sake of excluding illiterate or less learned parceners.

The gains of science are excepted.

7. Other separate gains instanced by YA'JNYAWALCYA.

7. So YA'JNYAWALCYA directs: "Whatever else is "acquired by the co-parcener himself, with- "out detriment to the father's estate, as "a present from a friend, or a gift at nup- "tials, does not appertain to the co-heirs."‡

8. Explanation of his text.

8. Here, the mention of "a present "from a friend" and so forth is intended for illustration only; since it is in such

Annotations.

6. *His own.*] Acquired with his own wealth and by his own labour only. S'RÍCRÍSHN'A.

Not common.] Not liable to be shared with the rest of the brothers. S'RÍCRÍSHN'A.

* MENU, 9. 208. VISHN'U, 18. 42. Vide Infra. § 31. The second half of the stanza is read otherwise in the *Mitácshara*, Ch. 1. Sect. 4. § 10.

† Vide Infra. § 35. ‡ YA'JNYAWALCYA, 2. 119 Vide Infra. § 38

modes that acquisitions are usually made without expenditure.

9. A passage of MENU quoted.

9. So MENU likewise says: "Wealth, however, acquired by learning, belongs exclusively to him "who acquired it; and so does any thing "given by a friend, received on account of "marriage, or presented as a mark of respect."*

10. One of VYA'SA.

10 VYA'SA [delivers a similar precept:] "Wealth "gained by science, or earned by valour, or "received from affectionate kindred, belongs, "at the time of partition, to him [who "acquired it;] and shall not be claimed by the co-heirs."

11. Gift of affectionate kindred explained.

11. What is obtained through favour or the like, from a father, uncle, or other kind relations, is received from affectionate kindred.

12. A passage of NA'REDA cited.

12. NA'REDA similarly says, "Excepting what is gained by valour, the wealth of a wife, and "what is acquired by science, which are "three sorts of property exempt from par"tition; and any favour conferred by a father."†

Annotations.

9. *Exclusively.*] An illiterate person, and one of inferior learning, are thus excepted. S'RÍCRÍSHN'A.

On account of marriage.] Received from a father-in-law, on account of becoming his son-in-law. S'RÍCRÍSHN'A.

As a mark of respect.] Obtained by officiating as a priest. S'RÍCRÍSHN'A.

As a mark of respect at the time of giving a *mad'huparcá.* The interpretation of the word *mád'huparcica*, by ME'D'HA'TIT'HI and GOV'INDA-RA'JA, who explain it 'wealth gained by officiating as a priest,' is erroneous, since that is gained by science. (See CA'TYA'YANA‡.) CULLU'CA BHAT'T'A.

11. *Received from affectionate kindred.*] Since property, termed *Saudáyica*, is exempt from partition as being the separate property of a woman (C. 5. Sect. 1. § 21), the author expounds the term otherwise. MAHE'S'WARA.

12. *The wealth of a wife.*] Since the separate wealth of a wife cannot be supposed liable to partition, (for it is her peculiar property,) the author expounds the text otherwise. S'RÍCRÍSHN'A.

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* MENU, 9. 206. Vide Infra. § 31. † NA'REDA, 13. 6. Vide Infra. § 33. ‡ Vide Sect. 2. § 1

13. Exposition of the text.

Excepting the above, other property may be divided.

13. What was received at the time of obtaining a wife is here called the "wealth of a wife;" meaning effects obtained on account of marriage. Excepting these acquisitions (§ 12), let him divide other property; for this phrase is here understood, as expressed in another sentence.*

14. Such gains are sometimes liable to be shared:

14. By these and other similar passages, the circumstance of the property having been acquired by valour or the like, is not stated as a sufficient reason for its being exempt from participation; since a distribution even of property so acquired, is expressly ordained in certain cases.

as declared by VYA'SA.

Thus VYA'SA directs a partition of effects so gained, with the use of the common goods. "The brethren participate in that wealth, which "one of them gains by valour or the like, using any "common property, either a weapon or a vehicle. To him "two shares should be given: but the rest "should share alike."

and NA'REDA.

So NA'REDA ordains: "He, who maintains the family of a brother studying "science, shall take, be he ever so ignorant, a share of the "wealth gained by science."†

15. Especially the gains of science.

15. Since the term "maintained" is exhibited in the singular number, if the family of the brother, who is studying science, be made to prosper by another brother at the expense of his own wealth, or by the labour of his body, then he also has a title to property gained by that science.

Annotations.

14. *Ignorant.*] Illiterate. S'RÍCRÍSHN'A.

15. *Since the term is exhibited in the singular number.*] For it may be inferred from the use of the singular number, that the act is independent of any thing else. This independency is an independence of the common property, as well as of the separate property of their brothers or co-heirs. Hence, if the support were afforded by two, or by three, unlettered co-heirs, all these shall participate. S'RÍCRÍSHN'A.

By exhibiting the term in the singular number, an exception to the joint property is indicated, and not exclusion of other brothers supporting the family by their labour, or by the expenditure of their own wealth. Hence two such brothers would also take a share of the property gained through science. MAHE'S'WARA.

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* NA'REDA, 13. 4. † NA'REDA, 13. 10.

16. So [the same legislator says,] "A learned man "need not give a share of his own acquired "wealth, without his assent, to an unlearned "co-heir: provided it were not gained by "him using the paternal estate."*

16. Another passage of NA'REDA.

17. The word "paternal" intends joint property. What has been gained by him without using that, a learned man need not give up, against his will, to an unlearned co-heir. But to a learned or instructed co-heir, he must give a share of any thing acquired by him, even without the use of joint property. Accordingly GAUTAMA says, "His own acquired wealth, a "learned man need not give up, against his "inclination, to unlearned co-heirs."†

17. The gains of science need not, however, be shared with an unlearned co-heir.

So GAUTAMA declares.

18. What is gained by his personal labour on his separate funds, being his own acquired property, he need not give up, if he be unwilling to surrender it, unto unlearned co-heirs: but he must yield it to learned brethren.

18. Interpretation of the text.

19. This, however, relates only to the gains of science. So CA'TYA'YANA declares: "No part of the wealth, which is gained by "science, need be given by a learned man, "to his unlearned co-heirs: but such pro-"perty must be yielded by him, to those "who are equal or superior in learning."

19. It relates to the gains of science; agreeing with a passage of CA'TYA'YANA.

They are shared with such as are equally or more learned.

20. The word learning, expressed in the text, [and occurring there once only‡] is connected with both terms, "equal" and "superior." Therefore, it must be yielded to such as are equal or superior in learning: but those who are less learned, or who are unlearned, have no right to participate.

20. Exposition of the text.

Annotations.

16. *Using the paternal estate.*] This regards the employment of funds otherwise than for food and raiment: for wealth must be used for such purposes even by a person remaining at home. CHU'DA'MAN'I and S'RÍCRISHN'A.

17. *Intends joint property.*] Else, there would be no partition, if the estate of the grandfather or other ancestor were used.

19. *This relates only to the gains of science.*] For any other property, acquired by himself, need not be surrendered, either to learned or unlearned co-heirs. S'RÍCRISHN'A.

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* NA'REDA, 13. 11. † GAUTAMA, 28. 28. ‡ S'RÍCRISHN'A

21. The essential condition is, that no use have been made of joint funds.

A passage of Scripture, to that effect, may be supposed.

21. Since it appears from these and other texts, that partition does or does not take place, in the case of wealth acquired by science, valour, or the like, according as joint property is or is not employed; and since this alone is the reason; a revealed maxim, containing that term only, must be inferred in words such as these, 'divide that, which is acquired by 'use;' not one containing also the terms 'gained by valour' and so forth: for the purpose is accomplished by the general maxim, which must necessarily be inferred.

22. This is confirmed by the *Mímánsá.*

22. This is precisely the object of the reasoning taught [in the *Mímánsá*] under the head of *Hólácá.*

23. Or the rule may be grounded on reason:

23. Or the same meaning may be deduced from reasoning [without the trouble of inferring the origin of the rule from a lost passage of Scripture.*] That, which is acquired by a

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21. *Since this alone is the reason.*] Since the making of the acquisition with or without the use of such property is alone the reason: since acquisition with the use of it is a ground of partition; and without such use, a ground of exemption from partition. S'ríCRÍSHN'A.

The general maxim which must be inferred.] One, as above stated, which does not contain the terms 'gained by valour, &c.' For it would be needless trouble to assume a maxim containing these terms, in such form as follows; 'divide 'that which is gained by valour or the like without use.' S'RÍCRÍSHN'A.

22. *Reasoning taught under the head of* Hóláca.] It is the 8th topic *(ad'hicaran'a)* of the third chapter of the 1st book. The purport of it may be thus stated: the *Hólácá* or festival of the spring *(Vasantótsava)* is celebrated by the *Práchyas* or eastern *Indians;* and, in like manner, other observances are peculiar to other people: that is, (as remarked by commentators,) *Udvrìshabha-yajnya,* which consists in driving a bull after worshipping him, is practised by the *Udíchyas* or northern *Indians;* and the *A'hnínaibuca* or worship of certain trees, or other particular objects, as deities, by the *Dacshinátyas* or southern *Indians.* These local usages are concluded to be founded on some precept; and the precept is inferred to be a general one, not a special one restricted to the particular people among whom the usage prevails. Vide C. 2. § 40.

23. *In proportion to the amount of his allotment.*] In the case of wealth gained with the use of the common stock of brothers ranking in different tribes, the use has been of four shares appertaining to the son of the *Bráhman'i* wife, and three, two and one share belonging to the sons of the *Cshatriya* and the rest.

* Mahe's'wara, Achyuta, &c.

person, belongs exclusively to him, so long as he lives; if there be no special rule [to the contrary]: but, where the exertion of one is merely through the joint property, and the other contributes to the acquisition by his person and wealth, it is a rule suggested by reason, that the one shall have a single share, and the other two. Hence likewise it follows, that, if the joint stock be used, shares should be assigned to each person in proportion to the amount of his allotment, be it little or much, which has been used.

and shares of the gain should be proportionate to shares of the stock.

24. Moreover, the text of CA'TYA'YANA [is similarly founded on reason.] "When brethren separated in regard to the patrimony, and "subsequently living anew together, make "a [second] partition, he, from whom an "acquisition has proceeded, shall again take a double share."

24. CA'TYA'YANA provides a rule concerning re-united parceners.

25. This is expounded by S'RÍCARA as signifying, that 'a re-united parcener, who has made 'an acquisition with the use of the joint 'stock, shall have two shares; and the 'rest, one apiece.'

25. S'RÍCARA's exposition of the text.

26. Hence it appears to be the opinion both of the saint and of the commentator, that wealth, gained with no use of the common funds, appertains exclusively to the acquirer, even in the instance of a re-union of co-parceners; and that such wealth is not joint property: since no special allotment is directed in the case of a gain made without use of joint stock.

26. Again, made on separate funds, is several property.

27. Such being their meaning, the same is equally proper for the unseparated co-parcener, as for the re-united one: because

27. The same is proper before a first partition.

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In such an instance, their shares of the gain should be assigned in exact proportion to their respective allotments of the stock. S'RÍCRÍSHN'A.

26. *Of the saint and of the commentator.*] Of the saint; that is, of CA'TYA'YANA: for, after specifying residence in the same abode, he propounds a double share, if the joint stock have been used; and does not direct an allotment in the case of wealth acquired with no use of common funds. Of the commentator; that is, of S'RÍCARA: for he has expressly so interpreted the text. S'RÍCRÍSHN'A.

27. *For reasoning opposes that restriction.*] As a precept of revelation is inferred in these terms, 'the *Hólácá* should be performed,' to authorize the observance of that festival; and not one containing the term *Práchya*, indicating

residence in the same abode [which implies junction of property*] is equally pertinent as a reason, when separation has not yet taken place, as when it has been annulled. Since the text is likewise pertinent, as directing, that the acquirer shall have two shares of an acquisition made with the use of common property, it is not right to restrict it to the case of re-united parceners: for the reasoning, taught under the head of *Hóláca*,† opposes that restriction.

28. An acquirer using joint stock has two shares. Not using it, he should have the whole.

28. Besides, it is an uncontested rule, that an acquirer, as such, shall have two shares of wealth gained by the use of joint funds: for that allotment has been ordained by a text [of VYA'SA] above cited (§ 14) in the single case of the use of common stock. It is not reasonable to assign two shares only in the instance of an acquisition made by personal exertion upon separate funds: but something more [than two shares‡] would be reasonable; either the whole, or something less [than the whole.§] Here, since something less [than the whole||] has not been directed either by sages or by compilers; and since it appears, that the rest of the brethren participitate [in one case] on account of the employment of their common stock; it is fit, that their participation should be null [in another case] where that does not exist.

29. The rule is founded on reason;

29. The rule, that the acquirer shall have twice as much as the rest, must be grounded on reasoning: otherwise, [if its foundation in a passage of Scripture is to be assumed,¶ and

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the particular people who practice it: so a precept of revelation is inferred in these terms, 'the acquirer shall take two shares of wealth gained with the use 'of common property;' not one containing the term 're-united parcener,' as a restrictive epithet of the acquirer. S'RÍCRĬSHN'A.

28. *Where that does not exist.*] Where neither the use of the joint funds, nor a common exertion of the rest of the brethren, exists; either of which would be a reason for the participation of the co-heirs. S'RÍCRĬSHN'A.

29. *Otherwise it would be necessary to insert, &c.*] If it be not founded on reasoning; the condition, that he be the acquirer, must be inserted in the revealed maxim 'Let the father reserve two shares for himself.' If then a pas-

* S'RÍCRĬSHN'A and ACHYUTA. † Vide § 22. ‡ CHU'DA'MAN'I and S'RÍCRĬSHN'A.
§ Ibid. || *Ibid.* ¶ MAHE'S'WARA.

reasoning is not to be taken as its ground ;*] it would be necessary either to insert in the maxim of revelation in question, the condition of a gain made [by the father who is declared entitled to two shares ;†] or else to establish separately the title [of an acquirer to a double share.‡]

30. And the conclusion is true.

30. It is therefore true, that wealth gained without use of joint stock belongs to the acquirer alone, not to the rest of the co-parceners.

31. It is no general rule, that gains, made before partition, shall be shared.

31. Moreover, a general maxim [of Scripture §] to this extent, 'Let all share what is gained 'by an unseparated co-parcener,' cannot be inferred. For an exception to wealth acquired by valour or the like [without use of the joint stock||] does occur. Thus

A passage of MENU cited.

MENU says, "Wealth, however, acquired "by learning, belongs exclusively to him "who acquired it: and so does anything given by a friend, "received on account of marriage, or presented as a mark "of respect."¶ So MENU and VISHN'U

And of MENU and VISHN'U.

ordain, "What a brother has acquired by "his labour, without using the patrimony,

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sage of Scripture be assumed in this form; 'let the father, who has made an 'acquisition, reserve two shares:' a father, who had not made an acquisition, would not have a double share; nor would a brother or other co-heir, who was the acquirer of the property, have a double allotment. The author, therefore, adds, 'or else to establish separately the title.' The distinct right of an acquirer, independently of paternity or other particular relation, must be separately established. Consequently, since it would be troublesome to infer a foundation in Scripture on both points, it is right to ground the rule on reasoning. S'RÍCRÍSHN'A.

31. *Moreover a general maxim, &c., cannot be inferred.*] If the rule were founded on reasoning, the acquirer's allotment should be proportionate to his exertion: and a general direction for his taking a double share would consequently be improper. Hence it is right, that the acquirer's double portion should be grounded on a general maxim of revelation in these terms, 'the 'acquirer has two shares of what is gained before partition, and the rest have 'one apiece:' accordingly, it is seen in the practice of the world, that, in the instance of wealth accepted as a present, though it be gained without use of joint stock, all participate on the sole ground of its being acquired by an unseparated co-parcener. Weighing this opinion of S'RÍCARA's, the author censures it. S'RÍCRÍSHN'A.

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* S'RÍCRÍSHN'A.

† S'RÍCRÍSHN'A, CHU'DA'MAN'I, &c.

‡ Ibid.

§ MAHE'S'WARA.

|| S'RÍCRÍSHN'A and CHU'DA'MAN'I.

¶ MENU, 9. 206. Vide Supra. § 9.

"he need not give up without his assent; for it was "gained by his own exertion."*

32. Exposition of those texts.

32. Without using.] This is connected likewise with wealth acquired by learning: for, in such instances also, a precept, ordaining partition if joint funds be used, does occur.

33. Passages of YA'JNYAWALCYA.

33. Thus YA'JNYAWALCYA says: "Whatever else is "acquired by the co-parcener himself, with-"out detriment to the father's estate, as a "present from a friend, or a gift at nup-"tials, does not appertain to the co-heirs. Nor shall he, who "recovers hereditary property, which had been taken away, "give it up to the co-parceners: nor what has been gained "by science."† So NA'REDA: "Excepting "what is gained by valour, the wealth of a "wife, and what is acquired by science, which are three sorts "of property exempt from partition; and any favour con-"ferred by a father."‡ Likewise VYA'SA: "Wealth gained by science, or earned by "valour, or received from affectionate kindred, belongs, at

NA'REDA.

and VYA'SA.

Annotations.

32. *With wealth acquired by learning.*] With the gains of science mentioned in the preceding text. (MENU, 9. 206.) S'RÍCRĪSHN'A.

The term, 'gains of science,' contained in the preceding passage of MENU, is here understood. MAHE'S'WARA.

One commentator reads in JÍMU'TA-VA'HANA's text *anushajyaté* "is under-"stood," where the other reads *sambad'hyaté* "is connected." Hence a difference in their manner of stating the same meaning.

A precept ordaining partition does occur.] Alluding to a passage above cited (§ 16), containing the reservation, "provided it were not gained by him "using the paternal estate." CHU'DA'MAN'I and S'RÍCRĪSHN'A.

33. *Hereditary property.*] This comprehends any common property. The same rule consequently holds good in regard to the wealth of the brethren, which they themselves acquired. S'RÍCRĪSHN'A.

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* MENU, 9. 208. VISHN'U, 18. 42. Vide Supra. § 3.
† YA'JNYAWALCYA, 2. 119 & 120. Vide Supra. § 7.
‡ NA'REDA, 13. 6. Vide Supra. § 12.

" the time of partition, to him [who acquired it,] and shall " not be claimed by the co-heirs."*

34. Interpretation of the text.

34. Received from affectionate kindred.] Obtained from kind relations.

35. Another passage of VYA'SA.

35. " What is given by the paternal grandfather, or by " the father, as a token of affection, belongs " to him [who receives it;] neither that, nor " what is given by a mother, shall be taken " from him. What a man gains by his own ability, with- " out relying on the patrimony, he shall not give up to the " co-heirs, nor that which is acquired by learning."†

36. The supposition of such a rule (§ 31) is erroneous.

36. By thus excepting, under these and other texts, in regard to all the tribes and all the classes of mixed or of mediate origin, wealth acquired, without use of the joint stock, by the acquirer's own ability; whether effected by means of any science; or received from affectionate kindred (being given by a relative;) or obtained from a friend, or at nuptials, or with a token of respect; or gained by valour (that is, by combat or the like;) or earned by labour (that is, by agriculture, service, merchandize, &c.); every acquisition [made without use of joint funds‡] is excepted: therefore, since there can be none other, the [alleged] precept has no pertinence.

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34. *Obtained from kind relations.*] This is not tautology; but merely intended to remind the reader of a preceding remark. (Vide § 11.) MAHE'S'WARA.

36. *The tribes.*] The four tribes, *Bráhman'a*, &c.

Classes of mediate origin.] The *Ambasht'ha*, the *Caran'a*, &c.

Classes of mixed origin.] The *Rat'hacára*, &c. S'RÍCRÍSHN'A and ACHYUTA.

The alleged precept has no pertinence.] The precept alleged by the opponent must run thus; 'divide what is gained by an unseparated co-heir, other than 'the several specified sorts acquired by valour and so forth without use of joint 'funds.' But that has no pertinence. It has no such object as required a precept to reach it. The reason is stated: " Since there is none other:" that is, since there is no case which was not provided for by reasoning. The partition of wealth gained by the use of joint stock, being deducible from reasoning, was not a case unprovided for. S'RÍCRÍSHN'A.

* Vide Supra. § 16. † Vide Supra. § 5. ‡ S'RÍCRÍSHN'A and CHU'DA'MAN'I.

37. Or a case or two [of acquisition made without use of the common stock*] may be, in some manner, assumed, to which the precept may relate. Still those cases should have been declared by express words: since it would have been easy for the sages to have said, 'divide certain property gained by an 'unseparated co-parcener:' and such property would be readily understood under its own name; better too than by using a long and circuitous expression, like this ['wealth acquired 'before partition,†] other than the gains of valour, &c., [acquired 'without use of joint funds;'‡] for it is burdensome. And, if the present be intended as an exception, all the sages ought to specify every excepted term: for, without that, the meaning of "other than such" would be unexplained; and the restrictive words of the sages would consequently appear as idle as the prattle of children. But, if it be intended for illustration, then some one instance is negligently propounded by one author; and another by another writer; and the omission of specifying the whole is right.

37. For reasons here stated.

38. Therefore the maxim is, 'divide wealth acquired 'with the use of the common stock:' and particular terms, as the gains of valour, &c., are inserted in the texts as instances.

38. Property gained on the joint stock is divided.

Annotations.

37. *A case or two may be assumed.*] A treasure, found by an unseparated co-parcener, is one instance; and the receipt of anything given by a stranger, through commisseration, occurs as another. Since a partition of these gains is not deducible from reasoning, for they were not obtained by the use of joint property, how can it be said, that the precept has no pertinence? The author proposes this doubt. S'RÍCRÍSHN'A.

Idle as the prattle of children.] If it be severally declared 'divide wealth 'other than the gains of science;' 'divide acquisitions other than those of valour;' and so forth; a knowledge is not thus obtained of what is meant by 'property 'acquired before partition, other than particular specified sorts,' so as to distinguish what is liable to partition. Consequently, since it does not determine the proposed question whether a partition of such property shall or shall not take place, it is unmeaning, and therefore similar to the prattle of children. S'R'CRÍSHN'A.

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* ACHYUTA. † S'RÍCRÍSHN'A. ‡ S'RÍCRÍSHN'A.

39. Not any property acquired before separation.

39. Hence the declaring of property common, merely because it was gained by an unseparated co-parcener, is not grounded on authority.

40. A passage of YA'JNYAWALCYA explained.

40. Besides, the text of YA'JNYAWALCYA ("Nor shall "he who recovers hereditary property, &c." § 33) is acknowledged by you likewise, as signifying, that, if one recover the property of the father, grandfather, or other ancestor, which has been taken away by any person, it appertains to him alone, not to the rest. Thus, [the author] denying the right of unseparated co-heirs in the property, because it has been recovered, although a trace of the former right exist, denies the remoter title of the rest to wealth originally gained by the man himself.

41. S'RÍCARA'S opinion.

41. It has been said by S'RÍCARA, 'If wealth, acquir-'ed without using the patrimony, belong 'exclusively to the acquirer, then effects, 'received in a present, can never be shared 'with another brother; for the receipt of a present cannot 'be attended with expenditure of paternal wealth. It is 'indeed alleged, that valuables are employed, at the receipt 'of gifts, for the gratification of the donor; as a heifer or 'the like in the purchase of sacrificial materials; or as 'milk for the support of life, during the sacrifice denominated

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40. *Denying.*] If the reading be *nirácurvat* (in the neuter,) the text of YA'JNYAWALCYA is the agent in the sentence. But, if *nirácurvan* (in the masculine,) YA'JNYAWALCYA himself is so. MAHE'S'WARA.

Unseparated co-heirs.] For the text, containing no restriction, relates to co-heirs whether separated or not separated. S'RÍCRÍSHN'A and ACHYUTA.

For, since the construction of the text is 'He shall not give up, at the time 'of partition, that which he recovers;' unseparated co-heirs are, of course, inferred, from its being understood to precede partition. CHU'DA'MAN'I.

Originally.] With no trace of a former right. S'RÍCRÍSHN'A and MAHE'S'-WARA.

41. *As a heifer or the like.*] A heifer, one year old, is directed by rituals to be given for the purchase of the *Sóma* or moon plant *(Asclepias acida)* required for a sacrifice at which the juice of that plant is drunk.

As milk during the Jyótisht'óma.] A *Bráhman'a* is allowed to drink milk during the celebration of the *Jyótisht'óma,* which lasts five days. This sacrifice is performed, by followers of the *Védas,* for the specific reward of happiness in heaven.

Jyótisht'óma. Here the valuables are not employed for the
'gratification of the giver, since his gratification, by receipt
'of other effects, is not requisite for a donation, the inten-
'tion of which is spiritual; and, as the act of receiving is
'momentary, nourishment for the person, who accepts the
'present, is not requisite, as it is during the tedious cele-
'bration of the *Jyótisht'óma,* for him who by that ceremony
'seeks celestial bliss.'

42. Refuted.

42. That is futile: for instances often do occur, in the world, of expenditure of wealth, by giving presents to induce a donation; and, in the present age, wealth received in gifts is similar to that which is earned by service. Accordingly it is said, "In the *Cali* "age, [gifts are made] to a follower."

43. His reply answered.

43. And as for what is alleged [by the same author], that 'gratification is no cause of receipt of 'presents, having no such operation, since 'long attendance is the cause; and wealth, 'therefore, is not the occasion of such receipt through the

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42. *Expenditure of wealth by giving presents.*] By presenting agreeable things, &c., or, if the reading be *upadána* (instead of *upahára,*) by giving bribes, &c. S'RÍCRÍSHN'A.

Wealth received in gifts is similar to that earned by service.] Since a donation is obtained by long attendance, the expenditure of wealth is sometimes requisite for the support of life. S'RÍCRÍSHN'A.

A follower.] One constant in attendance; an earnest solicitor. This is connected with the terms 'gifts are made;' for it is said "In the first age, "gifts are made by going to seek an acceptor; in the second, they are present- "ed to one invited for the purpose; in the third, to one who solicits them; in "the fourth, to a constant follower." S'RÍCRÍSHN'A.

43. *Since long attendance is the cause.*] Since presents are also seen to be obtained by long attendance, gratification does not operate towards the receipt of presents; and consequently is not the cause. S'RÍCRÍSHN'A.

Through the medium of gratification.] Only through that medium; not by their own independent power. Therefore, gratification is not unoperative. S'RÍCRÍSHN'A.

If the effect be not produced, &c.] The particular disposition of the person is a concomitant circumstance. If the proper disposition be wanting, gratification is not produced. There is consequently no unoperativeness of it as a cause. But some say, this is an answer to the question, how can gratification be a cause of receipt of presents, since, in some instances, no present is obtained, though gratification be produced? S'RÍCRÍSHN'A.

'medium of gratification;' that is still more futile: for long attendance and the rest become causes of the receipt of presents, through the medium of gratification; and, according to the diversity of men's dispositions, [gratification*] is seen to arise, in the mind of one, from pecuniary gifts; of another, from long attendance or the like; of some, from the mere evincing of particular qualities. If the effect be not produced, for want of an attendant circumstance, it must not be thence concluded to be no cause; since, as is observed accordingly, gratification is produced by means which are not invariable.

44. His further arguments.

44. It has been further urged [by the same author,] 'If [it be alleged,] that wealth mediately 'accomplishes the receipt of presents, being 'employed during attendance; since receipt 'cannot take place without contiguity; nor can this be 'without nourishment: that is denied; for nourishment, 'used for the support of life, previous to the celebration of 'a *Jyótisht'óma* or other religious ceremony, would mediately 'serve for that ceremony, since the *Jyótisht'óma* could not 'take place without previous support of life: all food would, 'therefore, be intended for religious ends, not for human 'purposes: and consequently wealth, which supplies it, 'would be designed for sacrificial uses; and the means of 'acquiring it would also be meant for the same end; and 'thus the maxim, that the acquisition of wealth, wealth 'itself, and food, are adapted to human purposes, would be 'contradicted.'

45. Repelled.

45. That is most futile; for, although it mediately contribute to the celebration

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Annotations.

By means which are not invariable.] It is effected by various means, which are independent of each other. S'RÍCRISHN'A.

44. *If it be alleged.*] In some copies of the text, "if" *(yadi)* is found; and that reading is right. In other copies it is omitted; but must be supplied. MAHE'S'WARA.

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* S'RÍCRISHN'A and MAHE'S'WARA.

of the *Jyótisht'óma,* food obviously serves the immediate purpose of satisfying hunger; and being designed for human uses, it contributes to religious ends; but there is no proof of it being intended for such ends; nor does its so contributing operate towards such a result. How then should it follow, that acquisition of wealth, wealth itself, and food, are adapted to religious purposes?

46. An objection obviated.

46. **Hence,** [because it was not intended for that purpose though it contribute to the result,* or for the reason which will be stated,†] there is no room for the reproach, 'If 'wealth be acknowledged to contribute to the receipt of 'presents, by means of nourishment previous to such 'receipt, then, since no acquisition of wealth can be made 'without nourishment from the time of the receiver's birth, 'every mode of gain would be accompanied with detriment 'to the patrimony; and the restriction, "without using the '"patrimony," (§ 3) would therefore not be inserted.' For, lest the restriction become superfluous, the text is understood to signify employment of wealth other than an expenditure of it adapted to nourishment and similar use.

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45. *There is no proof of its being intended for such ends.*] Of its being meant for such purposes; of its being designed for sacrifices. S'RÍCRÍSHN'A.

For there is no proof of food being intended for such ends; that is, for sacrifices. MAHE'S'WARA.

No proof of the acquisition of wealth being intended for such ends; that is, for sacrificial uses. ACHYUTA.

The commentator proceeds to notice variations in the reading of the text, which do not, however, materially alter the sense.

46. *Hence.*] Because it was not intended for that purpose, though it contribute towards it. But some interpret "hence" for the reason subsequently stated; that is, lest the restriction become superfluous, &c. S'RÍCRÍSHN'A.

ACHYUTA is the author who so interprets it. CHU'DA'MAN'I gives the other explanation.

The text is understood to signify.] MAHE'S'WARA remarks with disapprobation a different reading, *(vachanárt'hatwát* for *vachanárt'hatwam;)* from which, however, by supplying a sentence, he deduces the same meaning.

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* CHU'DA'MAN'I and S'RÍCRÍSHN'A. † ACHYUTA and MAHE'S'WARA.

47. What is expended for necessaries, is no cause of an acquisition.

47. Moreover, an expenditure of wealth for nourishment or other use, must necessarily be made even by a person remaining at home; and such expenditure is not designed fo the acquisition of wealth: but its having been actually intended for that purpose is a requisite [to its being the cause of the gain :*] consequently the supposition does not go too far.

48. Vis'warú'pa's opinion is consonant to this.

48. Accordingly [since its being actually intended for the purpose is positively required; its merely contributing to that end is not sufficient;†] Vis'warú'pa has said, 'When 'wealth is not acquired by giving [or using] 'paternal property, it is declared [by the sages‡] not to be 'common, any more than wealth received on account of mar-'riage: it becomes not common, merely because property 'may have been used for food or other necessaries; since that 'is similar to the sucking of the [mother's] breast.'

49. So other expenditures without a view to gain.

49. Hence, [because its being actually intended for that purpose is a requisite to its being the cause of the acquisition,§] though much wealth, belonging to the father, have been expended in festivity at the son's initiation, or at his wedding, what is obtained by him in alms during his austerities as a student, or received on account of his marriage, is not common; for that expenditure of wealth was not made with a view to gain.

50. The purpose must have been gain, to render the acquisition common.

50. It is, therefore, demonstrated, that wealth, acquired by means of joint stock used for the express purpose of gain, is common property; and no other is so.

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47. *The supposition does not go too far.*] There is not ground for supposing, that wealth, expended for nourishment, is the cause of an acquisition. Mahe's'wara.

48. *Not acquired by giving paternal property.*] It is thus expressly declared, that the expenditure must have been actually intended for that purpose. S'rícrishn'a.

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* Mahe's'wara.
† S'rícrishn'a, &c.
‡ Mahe's'wara.
§ Ibid.

51. The same import may be deduced by abridging the substance of what has been expressed, after various disquisitions, by JITE'NDRIYA, who says, 'Whatever is acquired on separate funds is several property. For the sake of perspicuity, '[gains of science and other particular sorts*] are specified 'by way of example, in these and other words, "Wealth, '"however, acquired by learning, belongs exclusively to him '"who acquired it."† Such sorts of property are exempted 'from partition, because they are separate: but even these 'sorts of wealth become common, if there be a sufficient 'cause of a joint right. This also has, for the sake of ready 'comprehension, been in certain instances described [in the 'writings of sages‡] by the circumstance of joint stock used; 'in others, by that of united exertion made; in some, by 'that of common relation.'

51. The same results from JITE'NDRIYA arguments.

52. It has been, likewise, said by BA'LO'CA, 'The rest 'cannot have a right to wealth gained by 'one brother through science, or similar 'means; [being acquired without use of 'joint funds, and independently of the exertions of the 'rest:§] since there is no argument for it.'

52. BA'LO'CA indicates a like opinion.

53. The practice of dividing wealth gained by receipt of presents without expenditure of joint property, which is observed to prevail among virtuous people, is not unsuitable, whether founded on the mutual affection of the brethren, or on a manly sentiment. Or [it may be thus

53. The practice of dividing all presents accounted for.

Annotations.

51. *But even these sorts of wealth become common.*] Such sorts of wealth, being gained by science, valour, or the like, are joint property, if attended with a sufficient cause of a joint right. Though the wealth be of such sort, it is common property. S'RÍCRISHN'A.

By the circumstance of joint stock used.] For example, 'The brethren participate, &c.' (VYA'SA.) Vide § 14.

By that of united exertion made.] As in the text, 'If all of them, being 'unlearned, &c.' (MENU, 9. 205.)

By that of common relation.] For instance, 'After the death of the father 'and the mother.' (MENU, 9. 104.) Vide C. 1. Sect. 1. § 14.

And thus, if anything be given to one, expressly in consideration of his being the son of a person named; all the sons of that person are entitled to partake. S'RÍCRISHN'A and ACHYUTA.

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* S'RÍCRISHN'A. † MENU, 9. 206. Vide § [illegible] ‡ ACHYUTA. § S'RÍCRISHN'A

accounted for :] people, observing the partition of wealth received in presents, (for presents are in general gains of science; and, as such, the participation of co-heirs equally or more learned is ordained by a passage of law, though the property have been acquired without use of joint funds ;) and not knowing, that this partition of the gains of learning is made under a special rule respecting science, but erroneously supposing the partition to take effect because the wealth was gained by an unseparated co-heir, have done so of their own accord. It is not, however, founded on uniform practice. There is consequently nothing incongruous.

54 A text of MENU expounded.

54. But, as for the text of MENU, ("After the death "of the father, if the eldest brother acquire any wealth, a share of that belongs to the "younger brothers; provided they have "duly cultivated science,"*) the meaning of it is this; under another text, placing the eldest and younger brothers in the relation of father and son, ("As a father should "protect his sons, so should the first born cherish his "younger brothers; and they should behave to their elder "brother, like children to their father, conformably with "their duty respectively,"†) the younger brothers have a title in the wealth of the eldest, though obtained without use of joint stock, as they have in their father's acquisitions. But there is this difference: that even the unlearned sons are entitled to their father's acquired property; but the learned brothers only have a right to participate in the wealth gained by the eldest.

Annotations.

54. *If the eldest brother acquire any wealth.*] If he alone acquire it by his labour, with a separate stock. S'RÍCRÍSHN'A.

Placing brothers in the relation of father and son.] After the death of the father; for the text occurs under that head.

Younger brothers have a title in the wealth of the eldest.] Not in that which is acquired by the middlemost. S'RÍCRÍSHN'A.

* MENU, 9. 204. † Ibid. 9. 108.

55. This interpretation is right; for the terms of the text would else become unmeaning; expressing 'after the death of the father,' 'if the eldest brother, &c.,' 'provided they 'have duly cultivated science.'

55. Confirmation of that exposition.

56. Conclusion. Gains are not shared on the simple ground of parcenery.

56. Consequently it was an inaccurate assertion, that another unseparated brother participates, on the sole ground of the acquisition being made by an unseparated co-heir.

SECTION II.

Definitions of the various sorts of acquisitions, &c., exempt from partition.

1. ON this [occasion, or among topics hinted,*] the gains of science are explained. Upon that subject CA'TYA'YANA says, "What is gained "by the solution [of a difficulty], after a "prize has been offered, must be considered "as acquired through science, and is not included in parti- "tion [among co-heirs]. What has been obtained from a "pupil, or by officiating as a priest, or for [answering] a "question, or for determining a doubtful point, or through "display of knowledge, or by [success in] disputation, or "for superior [skill in] reading, the sages have declared to "be the gains of science and not subject to distribution. "The same rule likewise prevails in the arts; for the excess

1. Gains of science described by CA'TYA'YANA.

Annotations.

55. *For the terms of the text would else become unmeaning.*] They would be superfluous, if the younger brothers had a right, simply as such, to the gains of the eldest generally. S'RÍCRÍSHN'A.

After the death of the father.] Hence it appears, that the younger brothers do not participate in the separate acquisitions of the eldest, made while the father was living. S'RÍCRÍSHN'A, &c.

1. *On this.*] Among those sorts of partible property. If the reading be *atra*, "here," instead of *tatra* "there," the sense is, 'on this opportunity.' S'RÍCRÍSHN'A.

* S'RÍCRÍSHN'A.

"above the price [of the common goods], and that which is "gained through skill by winning from another a stake "at play, must be considered as acquired by science, and "not liable to partition. So VRĬHASPATI has ordained"

2. First sort. A prize for the solution of a difficulty.

2. 'If you solve this well, I will give you so much 'money:' after such an offer, if one solve the difficulty and obtain the prize, it is not subject to distribution.

3. Second sort. Fee for instructing a pupil.

3. From a pupil.] From a person instructed by the acquirer.

4. Third sort. Fee for officiating at religious rites.

4. By officiating as a priest.] Received as a fee or gratuity from a person employing him to officiate at a sacrifice.

5. These are dues, not gratuities.

5. These are fees, not presents; for they are similar to wages or hire.

6. Fourth sort. A reward for solving a question.

6. So, a question relative to science being resolved, if any one, through satisfaction, give any thing which had not been previously offered.

7. Fifth sort. A reward for clearing a doubtful point, or for deciding a litigated question.

7. Also what is obtained by clearing the doubts of one, by whom an offer has been thus made: "To him, who removes my doubts on the "meaning of this passage, I will give this "gold." Or [it may signify a fee, such as] the sixth part or the like, received for a correct

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Annotations.

The excess above the price.] Having taken gold or the like belonging to the joint stock, and having made bracelets or similar things, the value, which is thus superadded by the skill of the artist to the price of the gold, &c., is an acquisition made through science. S'RÍCRÍSHN'A.

By winning a stake at play.] A wager, previously staked, which is won by superior skill in play. S'RÍCRÍSHN'A.

5. *These are fees.*] To obviate the seeming tautology in the subsequent mention of a present obtained through the display of learning, after noticing a reward for resolving well a difficult question; the author says 'it is a fee, not 'a present.' It is not obtained by the mere acceptance of a gift. S'RÍCRÍSHN'A.

6. *A question relative to science being resolved.*] A proper answer having been given to a question proposed.

decision between two litigant parties, who apply for the determination of a dubious and contested point.

8. Sixth sort. A reward for display of science.

8. Likewise, what is received in a present or the like for displaying his knowledge in the sacred ordinances and so forth.

9. Seventh sort. A prize gained or stake won in a disputation.

9. So, in a contest between two persons respecting their knowledge of sacred ordinances, or in any other controversy whatsoever concerning their respective attainments, what is gained by surpassing the opponent.

10. Eighth sort. A prize for reading.

10. Likewise, where a single article is to be given, and there are many competitors, what is received for reading in a superior manner.

11. Ninth sort. The gain of a skilful artist.

11. Also, what is gained by painters, goldsmiths, and other artists, through skill in the arts, and so forth.

12. Tenth sort. A stake won by skill in play.

12. In like manner, what is won by beating another at play.

13. They are, in general, exempt from partition.

13. All this is exempt from being shared with the rest of the co-parceners. The meaning is as follows: whatever is acquired by any [skill or] science, belongs to the acquirer, not to the rest. For illustration only, it has been stated at large by CA'TYA'YANA, to obviate the error of S'RÍCARA and others.

14. So is any present to a learned man.

14. Hence, [since it is enumerated by CA'TYA'YANA among the gains of science;*] what is obtained in a present by displaying and making known his own knowledge, is

Annotations.

9. *Gained by surpassing the opponent.*] Received on terminating the contest by demonstrating the proposition: having been previously staked by the disputant, or being generously given by the king. S'RÍCRÍSHN'A.

13. *For illustration.*] For an example of wealth gained by science without use of joint funds. S'RÍCRÍSHN'A and ACHYUTA.

The error of S'RÍCARA *and others.*] Their mistake in supposing an acquisition to be subject to partition, simply because it was obtained by an unseparated co-parcener. S'RÍCRÍSHN'A.

* S'RÍCRÍSHN'A and ACHYUTA.

also an acquisition made by science: for a present is given to a learned man on account of his learning.

15. Yama describes a person worthy of gifts.

15. So Yama: "A man endowed with science, regular "in [the performance of his] duties, contented, patient, with subdued passions, "of strict veracity, grateful, disinterested, "kind to cows, careful of them, generous, a performer of "sacrifices, and a priest, the sages pronounce to be a worthy "object. But a present should not be conferred on such "as neglect rigid observances, or are ignorant of holy texts, "or merely live by their class: for a stone transports not "a stone [over the stream]."

16. The present is given on account of learning.

16. For, it is in right of his learning, that he is a fit object of gifts; and unlearned men are unworthy objects.

17. A different construction refuted.

17. Hence, what has been alleged by some one, that the gains of science signify such gifts [only*] as are received on account of teaching; must be rejected as having been said for want of seeing the text above cited: and because the word science *(vidyá)* being derived from the root *vid* to know, signifies any knowledge [or skill.]

18. S'rícara's objection repelled.

18. As for what is objected by S'rícara, that 'by pronouncing wealth received in presents to be the earning of science, receipt of presents, instruction of pupils,

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Annotations.

17. *For want of seeing the text above cited.*] Meaning the text of Ca'tya'yana. (§ 1.) S'rícrishn'a.

It must be rejected as inconsistent with the sense of the above-cited text of Yama. (§ 15.) Mahe's'wara.

This commentator appears to have read *vachanárthádars'anát* 'from seeing 'the purport of the text;' in place of *vachanádars'anát* 'for want of seeing the 'text.'

18. *By pronouncing wealth received in presents to be the earning of science.*] S'rícara's meaning is, that, if the fee for assistance in sacrificing be a gain made through science, because it is by science that the man was fitted for

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* S'rícrishn'a.

'and assistance in sacrifice, are confounded:' that is very futile; since, although presents and the rewards of teaching and assisting in sacrifices, and other particular sorts, be connected as being equally gains of science; yet the several sorts are not confounded: for still the rewards of teaching and of sacrificing are not presents; and it is an uncontested truth, that a black bull, a red or a pied one, or other individuals, though equally bulls, are not confounded.

19. His argument refuted.

19. Accordingly, [as they are not confounded,* or because things generically similar are specifically different;† therefore], since [it may be asked] 'how does the sage, by 'pronouncing what is received from a pupil or for officiating 'as a priest to be the earning of science, fail in discriminating 'the rewards of teaching and of sacrificing?' the allegation [of their being confounded,‡] merely by way of offering an objection, must be rejected.

20. Gains of valour described by CA'TYA'YANA.

20. CA'TYA'YANA propounds the gains of valour, &c., "When [a soldier] performs a gallant "action, despising danger; and favour is "shown to him by his lord pleased with "that action; whatever property is then "received by him, shall be considered as gained by valour. "That and what is taken under a standard, are declared not "to be subject to distribution. What is seized [by a soldier] "in war, after risking his life for his lord and routing the "forces of the enemy, is named spoil taken under a standard."

Annotations.

officiating; and if the reward of teaching and the receipt of presents be so likewise; then all three, being the gains of science, are confounded. S'RÍCRÍSHN'A.

A black bull.] *Níla*, the term here used, signifies blue, and is frequently employed in the sense of black; but the sort of bull intended by that term, in the selection of a steer to be consecrated and let loose at obsequies and on certain other occasions, is one of a red colour, with brown head and tail, and with white hoofs and horns.

A red one.] *Capila:* When applied to a cow, this term signifies one of the colour of lac-die, with black tail and white hoofs.

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* ACHYUTA. † S'RÍCRÍSHN'A. ‡ S'RÍCRÍSHN'A.

21. Nuptial presents explained by the same author.

21. "But wealth received on account "of marriage is considered to be that "which has been accepted with a wife."

22. Exposition of the text.

22. The meaning is, received at the time of accepting a bride.

23. Other sorts, not liable to partition, enumerated by MENU and VISHN'U.

23. So MENU and VISHN'U state other sorts of property exempt from partition. "Clothes, vehicles, ornaments, prepared "food, water, women, and furniture for "repose or for meals, are declared not "liable to distribution."*

24. Explanation of the passage.

24. Clothes.] Personal apparel and raiment intended to be worn at assemblies.

Vehicles.] Carriages or horses and the like.

Ornaments.] Rings and so forth.

Prepared food.] Sweetmeats, &c.

Water.] Contained in a pond or well; as suited to use.

Women.] Other than female slaves.

Furniture for repose or for meals.] Beds, and vessels used for eating and sipping [or drinking] and similar purposes.

Annotations.

22. *Received at the time of accepting a bride.*] This is indefinite: for the same must be likewise understood of other property received in consequence of becoming a son-in-law. S'RÍCRĬSHN'A.

24. *Suited to use.*] Adapted to employment. As much should be taken by each person as will supply his wants. There is not, in this instance, a restriction of equal shares. S'RÍCRĬSHN'A.

Other than female slaves.] Since the partition of a female slave is directed by VRĬHASPATI, ("A single female slave should be employed in labour, in "the houses of the several co-heirs successively, &c."†) the author says, 'other 'than female slaves.' S'RÍCRĬSHN'A.

Female slaves.] Meaning women kept for enjoyment. MAHE'S'WARA.

Accordingly GAUTAMA says, "No partition is allowed in the case of women "connected [with one of the parceners.]"‡ ACHYUTA.

Furniture for repose, &c.] The words are *yóga-cshéma-pracháran cha*. The *Retnácara* expounds *yóga-cshéma* the counsellor and priest; and *prachára* the path for cows and other cattle, &c. ACHYUTA.

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* MENU, 9. 219. But not found in VISHN'U's Institutes
† Vide C. 1. § 10. ‡ Vide *Mitácshara*. C. 1. Sect. 4. § 22.

25. Vya'sa enumerates exempted articles.

25. So Vya'sa : "A place of sacrifice, a field, a vehicle, dressed food, water and women, are "not divisible among kinsmen, though "[transmitted] for a thousand generations."

26. Interpretation of the text.

26. A place of sacrifice.] The spot, where sacrifices are performed ; or else an idol : not wealth obtained by sacrificing ; for that has been noticed as being the earning of science.

27. Ca'tya'yana specifies other exempted articles.

27. Thus Ca'tya'yana : "The path for cows, the carriage road, clothes, and any thing which "is worn on the body, should not be divid- "ed ; nor what is requisite for use, or in- "tended for arts : so Vrĭhaspati declares."

28. Meaning of the passage.

28. Requisite for use.] What is fit for each person's use ; as books and the like in the study of the *Védas*, &c. That shall not be shared by ignorant brethren. So what is adapted to the arts, belongs to artists ; not to persons ignorant of the particular art.

29. S'anc'ha and Lic'hita exempt certain articles.

29. Also S'anc'ha and Lic'hita : "No division of a "dwelling takes place ; nor of water- "pots, ornaments, and things not of gene- "ral use, nor of women, clothes, and chan- "nels for draining water. Praja'pati has "so ordained."

30. Explanation of the text.

30. A house, garden, or the like, which one of the co-heirs had constructed within the site of the dwelling place, during the father's life-time, remains his indivisible

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Annotations.

These terms are otherwise explained in the *Mitácshara*. C. 1. Sect. 4 § 23.

28. *As books, &c.*] If there be other effects of equal value with the books, these shall be retained by the learned brethren; and other chattels shall be taken by the illiterate co-heirs. This must be inferred. Else, if the hereditary property consist in books only, the illiterate heirs might be deprived of subsistence, if they had no right of participation. S'ricrishn'a.

29. *Things not of general use.*] As books for illiterate persons and so forth. S'ricrishn'a.

Channels for draining water.] Raghunandana reads *apám pracháraraťhy-ánám*; 'water, vessels, and roads;' in place of *apám prachárárťhánám*. 'channels for draining water.'

property : for his father has assented by not forbidding the construction of it.

31. Hereditary property recovered is in certain cases exempt.

31. So, even property inherited from the paternal grandfather, which has long been lost, and is not recovered by the rest through inability, or through aversion from [the efforts requisite for its] recovery, belongs exclusively to the father, if recovered by him on his own funds, and by his own labour ; and is not common property.

32. As declared by MENU. Such property belongs to the person recovering it.

32. Thus MENU ordains : "If a "father recover the property of his father, "which remained unrecovered, he shall not, "against his will, share it with the sons, "since, in fact, it was acquired by himself."*.

33. Explanation of the text.

33. Property appertaining to his father, not recovered by the sons ; not retrieved by them. The other readings, *anavápya* and *anavápyam* [in place of *anaváptam*,] are unfounded.

34. VRĬHASPATI declares property gained or recovered exempt from partition : but, after the demise of the acquirer, it is equally divided.

34. VRĬHASPATI says, "Over the grandfather's pro- "perty, which has been seized [by stran- "gers] and is recovered by the father "through his own ability, and over [any "thing] gained by him through science, "valour, or the like, the father's full domi- "nion is ordained. He may give it away at his pleasure, "or he may defray his consumption with "such wealth ; but, on failure of him, the "sons are pronounced entitled to equal "shares."

Annotations.

33. *The other readings are unfounded.*] For, according to one reading, something must be understood; and according to the other, a term must be taken in a secondary acceptation. S'RÍCRĬSHN'A.

34. *Equal shares.*] The specifying of equal shares forbids the deduction of a twentieth part for the eldest. CHU'DA'MAN'I and S'RÍCRĬSHN'A.

He may defray his consumption with such wealth.] All the copies, which have been collated, agree in reading *bhógan chaiva tató dhanát* 'he may defray ' his consumption with that wealth.' But, in every other compilation, as the

* MENU, 9. 209.

35. Exposition of the text.

35. Through his own ability.] The author thus indicates a separate personal exertion.

36. And of the preceding passage, (§ 32.)

36. In both texts, the term "father" is indefinite: for a reason [of the precept] is stated; "since, in fact, it was acquired "by himself." (§ 32.)

37. The rule is the same in regard to property recovered and acquired. Except land.

37. Thus the rule must be understood in the instance of any such hereditary property, other than land, exactly as in the case of property not hereditary, but acquired by the man himself.

38. S'ANC'HA provides a rule for one case of land.

38. S'ANC'HA propounds a special rule regarding land. "Land, inherited in regular succession, but "which had been formerly lost, and which "a single [heir] shall recover solely by his "own labour, the rest may divide according to their due "allotments, having first given him a fourth part."

39. The acquirer has a fourth part in addition to his own regular share.

39. By the term "solely" the author intimates, that neither common funds were used nor joint personal exertions made. Still it does not become the separate property of the person retrieving it; but a fourth part of the land recovered must be given to him in addition [to his regular allotment:] by force of the word land; and because there is no reason for supposing it to be vague.

40. Consumption.

40. Thus have been explained both what is divisible and what is exempt from partition.

Annotations.

Retnácara, *Smritichandrica*, *Calpataru*, &c., the reading is *bhágan* instead *bhógan*: 'He may make a distribution of such wealth.'

39. *In addition.*] The meaning of the text is, 'having given a fourth part 'of the land in addition, to the person who recovered it, all the co-heirs, together 'with him, shall take equal shares.' It is not understood from the term "the rest," that a fourth part only shall be given to him: for it would be an unequal rule, since the person recovering the land would receive less than his co-heir, if there be one or two sharers unconcerned in the recovery. S'RÍCRÍSHN'A.

CHAPTER VII.

On the participation of Sons born after a partition.

1. Menu, &c., declare, that a son born after partition is heir to his father; or shares with re-united brethren.

1. THE share of a son born after the partition of the estate is now declared. On that subject Menu and Na'reda say, "A son, born after "a division, shall alone take the paternal "wealth; or he shall participate with such "[of the brethren,] as are re-united with "the [father."]*

2. Interpretation of the text.

2. If the father, having separated his sons, and having reserved for himself a share according to law, die without being re-united with his sons; then a son, who is born after the partition, shall alone take the father's wealth; and that only shall be his allotment. But, if the father die after re-uniting himself with some of his sons, that son shall receive his share from the re-united co-heirs.

3. Gautama also pronounces him heir to his father's share.

3. Thus Gautama says: "A son, "begotten after partition, takes exclusively "the wealth of his father."†

Annotations.

2. *Having reserved a share according to law.*] It is thus hinted, that, if the father, through ignorance of the law, have made a partition in which he took a very small share for himself, his son, afterwards begotten, shall receive a due allotment from the brethren. S'ríckíshn'a.

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* Menu. 9. 216. Na'reda. 13. 43. † Gautama. 28. 27.

4. He, of whom the conception was subsequent to the division of the estate, is a son begotten after partition; being procreated by a person, who is separated [from co-parceners:] for, without conception, there is no procreation. Therefore, if the sons were separated [from the father,] while his wife was pregnant but not known to be so, the son, who is afterwards born [of that pregnancy,] shall receive his share from his brothers.

4. Exposition of the passage.

5. Not one only, but even many sons, begotten after a partition, shall take exclusively the paternal wealth. Thus VRĬHASPATI says: "The "younger brothers of those, who have "made a partition with their father, whether "children of the same mother, or of other "wives, shall take their father's share. "A son, born before partition, has no claim on the paternal wealth; nor one, begotten after it, on that of his "brother."

5. The same holds good, if there be more than one such son.

A passage of VRĬHASPATI cited,

6. One, born previously to the partition, is not entitled to the paternal estate: nor one begotten by the separated father, to the estate of his brother. So the same author declares;

6. And explained.

Annotations.

4. *Shall receive his share from his brothers.*] This must be understood where the father remains separate, having reserved for himself what ought to be reserved by him, and having given the residue to his sons. But, if the father be dead, the shares of him and of the brethren must be thrown together, and divided, according to law, by all the brothers. However, CHU'DA'MAN'I directs a new partition by mixing the whole of the effects, although the father be living; because the double share, or other allotment reserved by him, was not according to law. In the case supposed, if a share were previously set apart for the child in the womb, the wife's pregnancy being known, all shall participate in the father's allotment [after his demise,] provided there be no son begotten after the partition. But, if the father himself, though apprized of the pregnancy, have given shares to his sons, in virtue of his power as owner; the child in the womb has no right to participate, since their property in those shares is complete: he has a right only to the father's allotment; and, if there be a son begotten after the partition, he is entitled to partake equally with him. S'RÍCRÍSHN'A.

6. *Which is acquired by himself.*] It is thus intimated, that what is acquired through personal labour, on separate funds, by the father who is re-united after partition with another son, belongs also to the son begotten after the partition, and not to the re-united parceners. S'RÍCRÍSHN'A.

A further passage quoted,

"All the wealth, which is acquired by the "father himself, who has made a partition "with his sons, goes to the son begotten by him after the "partition. Those, born before it, are declared to have no "right; as in the wealth, so in the debts likewise, and in "gifts, pledges, and purchases."

7. And expounded.

7. Under the term "all," wealth, however considerable, which is acquired by the father, goes to the son begotten by him after partition.

8. A further passage cited,

8. "They have no claims on each "other, except for acts of mourning and "libations of water."

9. And explained.

9. By specifying "acts of mourning and libations of "water" only, the author excludes the remoter pretensions to a participation in wealth.

10. If land, &c., have been divided, the son subsequently born takes nevertheless a share.

10. This is applicable only to the case of wealth acquired by the father. But, if property inherited from the grandfather, as land or the like, had been divided, he may take a share of such property from his brothers: for partition of it is authorized, [only] when the mother becomes incapable of bearing more children. [Consequently, since the partition is illegal, having been made in other circumstances, it ought to be annulled.*]

11. VISHN'U authorizes his participation.

11. That is declared by VISHN'U: "Sons, with whom the father has made a "partition, should give a share to the son "born after the distribution."†

12. YA'JNYAWALCYA directs an allotment to be given out of the property forthcoming.

12. So YA'JNYAWALCYA: "When the sons have been "separated, one, afterwards born of a woman "equal in class, shares the distribution. "His allotment must positively be made, "out of the visible estate corrected for "income and expenditure."‡

Annotations.

10. *Land or the like.*] A corrody and shares are intended by the terms "or the like;" for gems, pearls, &c., are similar to a man's own acquired wealth. S'RÍCRÍSHN'A.

12. *Must positively.*] The particle *vá* is affirmative; and what has been consumed, is consequently excepted. S'RÍCRÍSHN'A, &c.

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* S'RÍCRÍSHN'A. † VISHN'U, 17. 3. ‡ YA'JNYAWALCYA, 2. 123.

13. That must relate to hereditary property.

13. Since it disagrees with the ordinance, that "he "shall alone take the paternal wealth," (§ 1) it must relate to hereditary property for the reason above mentioned.

Annotations.

The particle signifies 'or,' and denotes a regulated alternative. If there be evidence of the income and expenditure, the allotment shall be made, out of the 'visible estate:' if not, it must be grounded on a reference to the amount originally distributed. MAHE'S'WARA.

The visible estate.] The wealth forthcoming. ACHYUTA.

The remainder after allowing for income and expenditure: or that which is forthcoming. MAHE'S'WARA.

13. *For the reason abovementioned.*] That which was stated; 'because 'distribution is authorized when the mother becomes incapable, &c.' Therefore, whether pregnancy were known or not; the partition being illegal, which has been made, of the grandfather's estate, without the mother's being incapable of bearing more children, it ought to be annulled; and the two last-cited passages will relate to the distribution of such property: but the preceding texts of MENU and the rest regard the father's own acquired wealth. The contrary must not be supposed. S'RÍCRÍSHN'A.

CHAPTER VIII.

On the allotment of a share to a co-parcener returning from abroad.

1. The share of an absent co-parcener is directed by VRĬHASPATI to be delivered to him.

1 THE participation of one, who arrives after the distribution of the estate, is next declared. On this subject VRĬHASPATI says, "Whe-"ther partition have, or have not, been "made ; whenever an heir appears, he shall "receive a share of whatever common pro-"perty there is. Be it debt, or a writing, "or house, or field, which descended from his paternal "ancestor, he shall take his due share of it, when he comes, "even though he have been long absent."

2. Or to his heir:

2. "If a man leave the common family, and reside in "another country, his share must no doubt "be given to his male descendants when "they return. Be the descendant third, or fifth, or even "seventh, in degree, he shall receive his hereditary allot-"ment, on proof of his birth and name."

Annotations.

1. *Whether partition have or have not been made.*] By the rest, who remain in the country. So the text must be supplied.—ACHYUTA.

Whatever common property.] Which has descended from his ancestor. ACHYUTA.

2. *Or even seventh.*] The particle "or" *(vá)* connects this with other degrees not mentioned but included with the seventh. Therefore descendants, as far as the seventh in degree, returning from a foreign country, participate :

3. On proof of his absent.

3. "To the lineal descendants, when they appear, of "that man, whom the neighbours and old "inhabitants know by tradition to be the "proprietor, the land must be surrendered "by his kinsmen."

4. Such proof is necessary.

4. Under this text; the heir [of a co-parcener] long absent shall take his due allotment, after making himself known to the old inhabitants settled on all sides.

5. Conclusion.

5. Such is the participation of one arriving after a division.

Annotations.

not so the eighth or other remoter descendant. Accordingly, the text, which expresses, that "The right to participation ceases with the seventh person," relates to this subject. S'RÍCRÍSHN'A.

Be he the third, or fifth, or even seventh.] The particle "or" is here employed in an indefinite sense. If, therefore, at the time of the demise of the ancestor and owner, a descendant, within the degree of great grandson, be the eldest of the male issue living; then, since the property devolves in regular succession on the progeny, the descendant, even beyond the seventh degree, may have a good title. But, if the eldest of the [surviving] male issue be the son of the great grandson; then, since he is destitute of title, being debarred from offering a funeral oblation, his son, though fifth in descent, has not the right of succession. ACHYUTA.

The foregoing is cited, without mention of the author's name, by S'RÍCRÍSHN'A, who replies, 'That is not right: for, were it so, there would be no 'difference in the cases of one who remained at home and of one who went 'abroad; and the text would consequently be superfluous. Accordingly, a separate revelation must be presumed as the ground of that text. This should 'be considered by the wise.'

The close of S'RÍCRÍSHN'A's reply bears allusion to the sequel of ACHYUTA's argument, in which it is said, 'As for the supposition, that the rights of 'third, fifth, &c., are determined according to the greater or less distance of 'the place; but, since the succession is ordained to extend as far as the seventh 'in degree, it extends no further; and accordingly another passage of law 'expreses, that inheritance stops beyond the seventh in descent: that is wrong, 'for it would be necessary to assume another foundation of it [in Scripture;] 'and the rule would be irrelevant, since no determination could be formed, as 'there is no ground for selection of particular distances.'

CHAPTER IX.

On the participation of Sons by women of various tribes.

1. Partition among the offspring of marriages with women of different tribes.

1. PARTITION among sons of the same father by different women; some equal to himself by class, others married in the direct order of the tribes, is now described.

2. Such marriages are authorized by MENU.

The first wife must be of equal class.

Subsequent marriages may be contracted in the gradation of the classes.

2. Marriage is allowed with women in the order of the tribes, as well as with those of equal class; for MENU says, "For the first marriage of the twice-born classes, a woman of "the same tribe is recommended; but for "such, as are impelled by desire, those "following are preferable in the order of "the classes. A *S'údra* woman only must "be the wife of a *S'údra;* she and a woman "of his own tribe [are the only wives] of a "merchant; they two, and a woman of his "own class, are alone eligible for a man of the royal [or "military] tribe; and those [three] and a woman of his "own rank [may be wives] of a priest."*

3. Exposition of the text.

Marriages are not allowed with women superior;

3. A *S'údra* woman only.] The particle "only" is connected with every member of the sentence; for that term, expressed immediately before, is understood with the words "she," "they two," and "those three." The meaning is, that marriage in the inverse order of the tribes must by no means be contracted.

* MENU, 3. 12—13.

4. And are blamable with women inferior by class.

4. But for such, as are impelled by desire, these, &c.] This indicates an alleviation of offence, not entire exemption from blame.

5. S'ANC'HA and LIC'HITA cited.

5. So S'ANC'HA and LIC'HITA declare, "Wives must be "espoused. Women of like class are pre- "ferable for all persons." This is stated as the principal rule. The succedaneous one follows: "Four wives of a *Bráhman'a* are allowed in the "direct order; three, of a *Cshátriya*; two, of a *Vais'ya*; and "one, of a *S'údra*."

6. And explained.

6. The numbers here stated, "four," &c., are intended to refer to the tribes.

7. PAIT'HI'NASI shows, that marriage is here meant.

7. These women are wedded wives. So PAIT'HI'NASI shows: "Four wedded wives of a "*Bráhman'a* are allowed; and three, two, "and one, of the rest respectively."

8. Interpretation of his text.

8. Of the rest.] Of the *Cshátriya*, &c., in their order, three, two, and one, may be allowed.

9. Union of a regenerate man with a *S'údra* woman is reprobated by MENU and VISHN'U:

9. Though [such a marriage be] in the direct order of the classes, MENU and VISHN'U have strongly censured the union of a man of a regenerate tribe with a *S'údra* woman. "Men of the "twice-born classes, who, through infatua- "tion, marry a woman of the low tribe, soon "degrade their families and progeny to the "state of *S'údras*. According to ATRI and [GAUTAMA] the "son of UTAT'HYA, he, who marries a *S'údra* woman, is "degraded instantly; according to SAUNACA, on the birth of "a son; and, according to BHRĬGU, on the birth of a son's son. "A *Bráhman'a*, who has ascended the couch of a *S'údra* "woman, sinks to a region of torment: or, if he have begot "a child on her, he loses even his priestly rank."*

Annotations.

6. *The numbers refer to the tribes.*] Therefore, the marriage of a *Bráhman'a* with five or six *Bráhman'ís* is not prohibited. S'RÍCRĬSHN'A.

The meaning is, that five or six wives, similar to the husband himself in class, are not forbidden to a man of the sacerdotal or other tribe. ACHYUTA.

* MENU, 3. 15--17.

10. Though she be espoused subsequently to wives of higher classes.

A passage of HA'RI'TA confirms this;

and one of S'ANC'HA.

10. It thus appears, that the texts are applicable to the instance of such a woman married in regular gradation. HA'RI'TA's text also, which coincides with that of MENU and the rest, relates to a woman espoused. Thus he says, "No other is so sacrilegious, "as is the husband of a woman of the ser-"vile tribe; for that *Bráhman'a* is slain "by the child, which he himself begets on her." Accordingly [since marriage with a *S'údra* woman, and procreation of issue by her, are offences;*] S'ANC'HA omits the *S'údra* in describing a wife eligible for a twice-born man. "A *Bráhman'i*, a *Cshátriya*, and a "*Vais'ya*, are propounded as the allowed wives of a *Bráh-*"*man'a*; a *Cshátriya*, and a *Vais'ya*, of a *Cshátriya*; but a "*Vais'ya* is ordained the only wife of a *Vais'ya*; and a "*S'údra*, of a *S'údra*.

11. But adultery with such a woman is comparatively venial.

11. Hence these evils do not ensue on the procreation of offspring upon a *S'údra* woman, not married to [the *Bráhman'a*] himself but a venial offence is committed, and a slight penance is requisite, as will be shown.

12. Partition among sons by wives from various tribes, is propounded by MENU,

12. MENU propounds the distribution among sons of four classes. "Let the venerable son take "three shares of the heritage; and the son "of the *Cshátriya* wife, two shares; the "son of the *Vais'ya* wife, a share and "a half; and the son of the *S'údra* wife, "may take a share. Or let a person, conversant with law, "divide the whole collected estate into ten parts, and make "a legal distribution by this [following] rule: let the vene-"rable son receive four parts; the son of the *Cshátriya*, "three; let the son of the *Vais'ya* have two parts; and let the son of the *S'údra* take a single part."†

Annotations.

11. *Not married to himself.*] That is, married to another man. It does not, therefore, contradict what is subsequently said, 'This passage (MENU, 9. '178) supposes the *S'údra* to be unmarried.' S'RÍCRÍSHN'A.

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* S'RÍCRÍSHN'A. † MENU, 9. 151, 15[illegible]

13. In two modes according to the merit of the sons.

13. Two modes are propounded on the supposition of some [superiority of] good qualities [in the sons belonging to regenerate tribes,* or in the *S'údra's* son.†]

14. Vishn'u has stated the distribution in detail.

14. On this subject Vishn'u has delivered rules: "If "there be sons of a *Bráhman'a* by women "of the four tribes,"‡ &c., down to the concluding passage, "On this principle, shares "should be distributed in other cases like- "wise."§

15. Being elder by birth, a son shares with the higher tribe:

15. The son of a *Bráhman'a* by a *Cshátriya* wife, if eldest of all by birth and superior in virtue, shall be an equal sharer with the *Bráhman'a* son: and the son of a *Bráhman'a*, or of *Cshátriya*, by a *Vais'ya* wife, shall, in like circumstances, be an equal participator with the *Cshátriya* son. So Vríhaspati directs: "The son of a *Cshátriya* wife, being elder "by birth, and endowed with superior qua-

agreeably to a passage of Vríhaspati,

Annotations.

13. *On the supposition of some good qualities.*] In the sons belonging to the regenerate tribes. This phrase must be here understood. Achyuta.

According to the good and bad qualities of the *S'údra's* son. Some say, on the supposition of some good qualities in the sons belonging to regenerate classes. S'rícrishn'a.

Of the two modes, that, by which a greater portion is allotted to him, than by the other, should be selected in favour of the person, who is superior in good qualities. Chu'da'man'i.

If the first mentioned be respectively superior in good qualities, the distribution must be made in ten parts.

It should be here understood, that he, who is superior by his good qualities, shall take out of the whole estate the share allotted to a person of his tribe, according to the distribution in ten parts: and the residue shall be taken by the rest, sharing it according to the distribution in seven and a half parts; but the share of him, who is superior in good qualities, must be omitted [in this further partition.] However, should the *S'údra's* son be superior in virtue, the mode of allotment by seven and a half shares must be followed: since he would have a less portion, if the mode of distribution in ten parts were observed. Mahe's'wara.

14. *Down to the concluding passage.*] Vishn'u's text has not been inserted by this author, through fear of prolixity. S'rícrishn'a.

It is more fully cited by Achyuta as well as by S'rícrishn'a: but the insertion of it in these notes is not judged necessary.

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* Achyuta. † S'rícrishn'a. ‡ Vishn'u, 18. 1. § Ibid. 18. 40.

"lities, shall have an equal share with the venerable son of "the *Bráhman'i*; and, in like manner, the son of a *Vais'ya* "wife shall share equally with the soldier." So BAUD'HA'YANA says, "Of the sons by a woman of "equal class and by one of the next inferior tribe, if this son of the wife one degree "lower [than her husband] be [the most] virtuous, he may "take the allotment of an eldest son. For a virtuous brother "is the supporter of the rest."

and one of BAUD'HA'YANA.

16. Even the *S'údra's* son has that right.

16. It is thus shown, that the *S'údra* likewise, in similar circumstances, shall have an equal share with the *Vais'ya* son.

17. But he has no right to land, according to *Vrihat* MENU; especially a pious grant:

17. But land, which has been acquired by the father, through acceptance [of a pious donation,] shall belong to the son of the *Bráhman'i* exclusively, not to the *Cshátriya* son and the rest: and the house, and hereditary field, appertain to the sons of regenerate classes, not to the *S'údra*. So *Vrihat* MENU declares: "The "sons of the *Bráhman'i* shall take land which was receiv-"ed as a pious gift; but all the sons of twice-born classes "shall have the house, as well as the field, which has des-"cended from ancestors."

18. Though other sons share other land.

18. All sons, belonging to regenerate tribes, have a right to hereditary acquisitions gained both by the paternal grandfather and by the paternal great grandfather; for it is expressed without restriction, "descended "from ancestors." But, in the case of land obtained by acceptance [of a donation,] since the right of the *Cshátriya's* son and the rest is denied, that of grandsons and other descendants [claiming through such sons*] is [properly†] unacknowledged.

Annotations.

18. *Grandsons, &c.*] The grandsons of the *Cshátriya*, or other inferior wife. S'RÍCRĬSHN'A.

Is unacknowledged.] Dissent from their right is correct. So the sentence must be supplied. For, since the nearer relative has no title, it follows, by reasoning, *á fortiori*, that the relative's relative has none. S'RÍCRĬSHN'A.

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* S'RÍCRĬSHN'A. † Ibid.

19. A passage of VRĬHASPATI confirms this

19. This is declared by VRĬHASPATI : "Land, obtained "by acceptance of donation, must not be "given to the son of a *Cshátriya* or other "wife of inferior tribe : even though his "father give it to him, the son of the *Bráh-* "*man'i* may resume it, when [his father is] dead." And thus [since the text of VRĬHASPATI has the same foundation,*] land, obtained by acceptance of donation, is the same which has been termed [by MENU†] land received as a pious gift *(brahme-dáya):* for the study of the *Védas* (here signified by the term *brahme,)* and the knowledge of their meaning, have been propounded as qualifications for the receipt of gifts.

A pious grant is meant.

20. Not a mere present

20. It is not land which has been received as a present, according to the text of MENU : ("To priests "returned from the mansion of their precep- "tors, let the king show due respect ; for "that holy mode of showing respect by kings, is pro- "nounced unperishable."‡) Since this assumes the form of a token of respect.

21. However, this may be also intended.

21. Or else, this land is excepted by the one author, as the other is by the other.

Annotations.

19. *A pious gift.*] In the phrase *brahme-dáyágata*, in the text of *Vrĭhat* MENU ; which has been translated "received as a pious gift."

As qualifications for the receipt of gifts.] For a proper object of donations is so described. (Vide C. 6. Sec. 2. § 15.)

21. *This is excepted by the one author as the other is by the other.*] This, meaning a respectful present, is excepted by one, namely, by VRĬHASPATI ; and land received in a pious donation, by the other, namely, by *Vrĭdd'ha* MENU. Hence, both sorts descend from the father to the son of the *Bráhman'i* wife. CHU'DA'MAN'I.

This, which is in the form of a respectful present, is excepted by one, namely, by MENU ; and the other, meaning land received as a pious gift, by the other, that is, by VRĬHASPATI : and thus both sorts of land belong exclusively to the *Bráhman'i's* son. S'RÍCRĬSHN'A and ACHYUTA.

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* CHU'DA'MAN'I. † S'RÍCRĬSHN'A. ‡ MENU, 7. 82.

22. But the land of a *Bráhman'a* is not universally a holy heritage (*brahme-dáya*): for it is expressly declared, that sons of twice-born classes have a right to the hereditary field; and the *S'údra* is alone excluded. So a passage of law expresses: "The son, begotten on a *S'údri* "woman by any man of a twice-born class, is not entitled "to a share of land; but one, begotten on her, being of "equal class, shall take all the property [whether land or "chattels*]; thus is the law settled."†

22. But a *Bráhman'a's* landed property in general is not holy.

23. Since land only is mentioned, it follows, that a *S'údra's* son has no right to land acquired by his father, being of a regenerate tribe, through purchase, or through favour, or through any other means.

23. The *S'údra's* son cannot inherit land however acquired.

24. A *S'údra*, being the only son of a *Bráhman'a*, is entitled to a third part [of the inheritance]: and [the remaining] two parts go to the *Sapin'd'as;* or, on failure of them, to the *Saculyas*; or, if there be none, to the person, who performs the obsequies. So De'vala ordains: "A *Nisháda*, being the "only son of a priest, shall have a third part [of the herit- "age]; and let the kinsman, near or remote, who performs "the obsequies [for the deceased], take the two [remain- "ing] shares."

24. Being the only son of a *Bráhman'a*, the child of the *S'údra* woman takes a third: according to De'vala.

25. The son, begotten by a *Bráhman'a* on a *S'údri*, is termed a *Nisháda*. The difference between the *Sapin'd'a* and *Saculya* (the near and the remote kinsman) will be explained [under the head of succession to the estate of a man who leaves no son.‡]

25. Interpretation of the passage.

Annotations.

22. *A* S'údri *woman.*] Properly *S'údri* is the wife of a *S'údra*; and *S'údrá*, a woman of the *S'údra* tribe. (*Vártica* 1.—2. on Pa'n'ini 4. 1. 4.) But this distinction is not observed in the text here quoted.

Being of equal class.] A son begotten by a *S'údra* man on a *S'údra* woman. Chu'da'man'i and S'ri'crishn'a.

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* Chu'da'man'i and S'ri'crishn'a. † Vrihaspati cited in the *Retnácara.*

‡ S'ri'crishn'a. Vide C. 11.

26. If a *S'údra* be the only son of a *Cshátriya* or of a *Vais'ya*, he takes half of his estate; and the next heirs, according to the order of succession subsequently explained in regard to the estate of one who has no male issue,* shall take the other half. So VISHN'U says, "A *S'údra*, being the only son of any "twice-born man, takes half his property; "and the other half goes where the estate of a childless "man would devolve."†

26. Being the only son of a *Cshátriya* or *Vais'ya*, he takes half; as provided by VISHN'U. Other heirs take the residue.

27. Here the right to a third part, or the succession to half the estate, must be understood as restricted to the instance of a person endowed with science, morality, and virtue. For MENU says, "Whether he have sons, "or have no sons, by other wives, no more than a tenth part "must be given to his son by a *S'údra* wife."‡ Since more than a tenth part is by this text forbidden, although there be no son belonging to a regenerate tribe; it appears, that the preceding text relates to an excellent only son by a *S'údra* woman. As for the prohibition of his participating in the estate, as declared by MENU; ("The son of a *Bráh-* "*man'a*, a *Cshátriya*, or a *Vais'ya*, by a woman of the "servile class, shall not share the inherit- "ance: whatever his father may give him, "let that only be his property.§") It must be explained as implying, that the property, received by him through his father's favour, amounts to a tenth part of the estate.

27. If not virtuous, he has a tithe only, as declared by MENU;

or no share, if his father had given him so much.

28. A passage of VRĬHASPATI expresses, "The virtuous and obedient son, "borne by a *S'údra* woman, to a man who "has no other offspring, should obtain a "maintenance; and let the kinsmen take

28. But a bastard should have a maintenance or the means of earning a livelihood; as VRĬHASPATI directs.

Annotations.

26. *Only son of any twice-born man.*] Here the term twice-born relates to two classes, the *Cshátriya* and the *Vais'ya*: not to the *Bráhman'a*; since DE'VALA, (§ 24), ordaining a third part of the *Bráhman'a's* estate [for the *S'údra* son,] opposes that construction. S'RÍCRÍSHN'A and ACHYUTA.

27. *It must be explained, &c.*] For it is said, 'that only, which his father 'may give him, shall be his.' S'RÍCRÍSHN'A.

Through his father's favour.] If that, which has been so received, be equal to a tenth part, nothing more should be given to the *S'údra's* son. S'RÍCRÍSHN'A.

* C. 11. † VISHN'U, 18. 32—33. ‡ MENU, 9. 154. § Ibid. 9. 155.

"the residue of the estate:" which signifies, that something should be given, to enable him to practice agriculture or some other profession adapted to earn a subsistence; but to one deficient in good qualities, food and other necessaries, as means of subsistence, may be given, in consideration of his behaving with humility and obedience like a pupil. Thus a passage of MENU declares, "A son, begotten through "lust on a *S'údra* woman by a man "of the priestly class, is even as a corpse though alive, "and is thence called a living corpse (*páras'ava.*)"* These [two] passages imply, that the *S'údra* woman is unmarried. For a husband is enjoined to approach his wedded wife once in the proper season; and conception takes place then only, not on subsequent intercourse. Thus YA'JNYAWALCYA says, "If a brother die "without male issue, let another approach "the widow once in the proper season:"† and MENU ordains, "Having espoused her in due form, she being clad in a white "robe, and pure in her moral conduct, let him approach her "secretly once in each proper season, until issue be had."‡ The first intercourse being the cause of pregnancy, the mention of "once" may be intended for a secular purpose: else, it must be supposed to be meant for a spiritual end. Accordingly, in the practice of the world, months are counted from the day of the first intercourse, as well for regulating auspicious observances, as for determining the performance of ceremonies restricted to particular months, as the *Punsavana* and *Simantónnayana.* Hence, the expression "A son begotten through lust on a *S'údra,*" must relate to the child of an unmarried *S'údra.*

A passage of MENU cited.

Also passages of YA'JNYAWALCYA, &c.

Annotations.

28. *These two passages*] The two texts last cited. S'RÍCRÍSHN'A.

That the S'údra *woman is unmarried.*] Not married to any one: but kept for sensual gratification. S'RÍCRÍSHN'A.

For a husband is enjoined to approach his wedded wife once, in the proper season.] Consequently, since a single intercourse in proper season, which is the cause of pregnancy, is enjoined, the procreation of a son, which is its consequence, is also enjoined: for the injunction was propounded for that very purpose. S'RÍCRÍSHN'A.

Ceremonies restricted to particular months, as the Punsavana *and* Simantónnayana.] The first of the ceremonies here named is celebrated at the close of

* MENU, 9. 178. † Not found in the Institutes of YA'JNYAWALCYA. ‡ MENU, 9. 70.

29. But the son of a *S'údra*, by a female slave or other unmarried *S'údra* woman, may share equally with other sons, by consent of the father. Thus MENU says, "A son, begotten by a man of the servile class on his "female slave, or on the female slave of "his slave, may take a share of the heritage, "if permitted: thus is the law established."*

29. However, the bastard of a *S'údra* man by a *S'údra* woman may inherit, conformably with a passage of MENU.

30. Without such consent, he shall take half a share: as YA'JNYAWALCYA directs: "Even a son, "begotten by a *S'údra* on a female slave, "may take a share by the choice of the "father; but, if the father be dead, the "brethren should make him partaker of half a share."†

30. Or he may take half a share according to YA'JNYAWALCYA.

31. Begotten on an unmarried woman, and having no brother, he may take the whole property: provided there be not a daughter's son. So YA'JNYAWALCYA ordains: "One, "who has no brothers, may inherit the whole "property; for want of daughter's sons."‡ But, if there be a daughter's son, he shall share equally with him: for no special provision occurs: and it is fit, that the allotment should be equal; since the one, though born of an unmarried woman, is son of the owner; and the other, though sprung from a married woman, is only his daughter's son.

31. He shall share equally with a daughter's son, according to YA'JNYAWALCYA.

Annotations.

the third month of pregnancy. It consists of the following prayer recited by the husband, addressing his pregnant wife:—"Male are MITRA and VARUN'A "(the sun and the regent of the sea:) male are the twin sons of *As'winí*; "male are fire and air: may the child in thy womb prove male." The recital of this prayer is preceded by burnt offerings of clarified butter. The other ceremony mentioned should be performed in the fourth, sixth, or eighth month of the pregnancy. The husband decorates his wife's head with minium, ornaments, and other articles, reciting divers prayers for a fortunate gestation.

29. *On the female slave of his slave.*] On the wife of his male slave. CHU'DA'MAN'I. On the unespoused concubine of his male slave. S'RÍCRISHN'A.

30. *The brethren.*] The sons by a wedded wife. MAHE'S'WARA.

31. *Having no brother.*] His father having left no son by a wife. ACHYUTA. He being born of an unmarried woman and having no brother born of a wedded wife. MAHE'S'WARA.

* MENU, 9. 179. † YA'JNYAWALCYA, 2. 134. ‡ Ibid. 2. 135.

CHAPTER X.

On the participation of Sons by adoption.

1. Partition between a legitimate son and an appointed daughter.

1. IF a true legitimate son be born after the appointment of a daughter to raise up issue, the distribution to be made between them is here propounded.

2. They share equally, according to MENU.

2. In such a case, the appointed daughter and the legitimate son take equal shares: nor is the appointed daughter entitled to a deduction of a twentieth part in right of seniority. So MENU declares: "A daughter having "been appointed, if a son be afterwards born, the division "of the heritage must, in that case, be equal: since there "is no right of primogeniture for the woman."* For the appointed daughter does not herself perform the functions of an eldest son; but, through her son, presents funeral oblations: as is hinted by MENU: "He, who has no son may appoint "his daughter in this manner to raise up "a son for him: saying, the child which shall be born of "her, shall be mine for the purpose of performing my obsequies."†

Her appointment described in another passage of MENU.

3. Her son is considered as a son's son.

3. It must not be supposed, that, if the appointed daughter first bear a son, and a legitimate son of her father be afterwards born, her son should have the allotment of an eldest son: for he is considered as a son's son. MENU intimates as much,

* MENU, 9. 134. † Ibid. 9. 127.

saying, "By that male child, whom a daughter, whether "formally appointed or not, shall produce from an husband of an equal class, the maternal grandfather becomes grandsire of a son's son: let that son give the "funeral oblation and possess the inheritance."* For the appointed daughter is, as it were, a son *(putra)*; and her son is deemed a son's son *(pautra)*; and her father, to whom he thus appertains, becomes grandsire of a son's son. Now there has not been any mention of a peculiar allotment in right of primogeniture for the son's son.

4. He is figuratively called son in a passage of VASISHT'HA.

As for the text of VASISHT'HA, which declares the son of an appointed daughter to be an adopted son: ("This damsel, who has no brother, I "will give unto thee, decked with ornaments; the son, who may be born of her, "shall be my son,†") whence it appears, that both the appointed daughter and her son are [denominated] sons: this designation of him as a son must, (since it contradicts MENU; and since the oblation of a funeral cake is the only quality of a son, which he possesses;) be figurative: for, through him the appointed daughter, offers the funeral oblations; and thus one actually is such, and the other is so by his means.

Annotations.

4. *One actually is such; and the other is so by his means.*] Since both are givers of the funeral oblation, the terms 'figuratively a son' relate to both. The author declares the mode of it. One, namely, the son of the appointed daughter, actually offers the oblation; the other, or the appointed daughter, does so, through him; that is, through the son of the appointed daughter. CHU'DA'MAN'I.

One.] The son of the appointed daughter. *The other.*] The appointed daughter considered as a son. *By his means.*] By means of her son. S'RÍCRÍSHN'A.

One.] The son of the appointed daughter. *The other.*] The appointed daughter considered as a son. If the reading be *(feminine instead of masculine)*, *anyásyáh* for *anyasya*, the sense is, 'another, namely, the appointed daughter.' ACHYUTA.

One actually.] The true legitimate son is, of course, in right of his birth, a son. *The other.*] The son of the appointed daughter. *By these means.*] By presenting a funeral oblation like a son. MAHE'S'WARA.

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* MENU, 9. 136. † VASISHT'HA, 17. 16.

5. This is restricted to equal class.

Else the true son has the allotment of his tribe.

5. The distribution beforementioned must be understood in the case where the legitimate son and the appointed daughter are of the same tribe: but, if they be of dissimilar classes, a distribution between them must be made as between legitimate sons appertaining to different classes: for the true son and the appointed daughter are equal.

6. If she be barren or a widow, the appointment gives no right.

6. But, if a daughter, being actually appointed, become a widow without having borne a son, or if she be ascertained to be barren, she has not, in that case, a right to her father's wealth: since the appointment was made for the sake of a son, who may perform obsequies; and, on failure of that, she is similar to any other daughter.

7. Other adopted sons, sharing with a true son.

7. In a partition among sons of the wife and the rest with a true legitimate son, such of them, as are of the same class with the [adoptive] father, and superior by tribe to the true son, whether they be sons of an appointed daughter, or issue of the wife, or offspring of an unmarried damsel,

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Annotations.

6. *She is similar to any other daughter.*] It is thus intimated, that, as in the case of a barren daughter, who was not appointed, the next heirs take the inheritance; so they do, in the instance of such a daughter, who had been appointed. CHU'DA'MAN'I and S'RÍCRÍSHN'A.

7. *Superior by tribe to the true son.*] If the true son be issue of a woman of the military or of the commercial class; then, the son of the wife, or other subsidiary son, being born of a *Bráhman'í*, is superior by tribe. CHU'DA'MAN'I.

Son of an appointed daughter.] Since the appointed daughter herself is equal to the true legitimate son, she is not included in this enumeration. CHU'DA'MAN'I.

Begotten by himself.] "Issue begotten by a man himself" comprises, 1st, the *aurasa*, or true legitimate son; 2nd, a *paunarbhava*, or son by a twice-married woman; 3rd, a *páras'ava*, or son of a priest by a woman of the servile class; 4th, the *putricá*, or appointed daughter: these are all begotten by the man himself. "Issue procreated by another man" intends the *cshétraja*, or son of the wife, and so forth. "Sons received for adoption" are, 1st, *datta*, a son given; 2nd, *críta*, one bought; 3rd, *sahó'd'ha*, the son of a pregnant bride; 4th, *cánína*, a son born of an unmarried damsel; 5th, *critt'ima*, a son made. "Voluntarily given" signifies presented unsought: comprehending, 1st, the *apavidd'ha*, or son rejected [by his own parents]; 2nd, *swayamupagata*, one who comes of his own accord; and 3rdly, *gu'd'hótpanna*, a son secretly produced. S'RÍCRÍSHN'A and ACHYUTA.

or secretly produced, or abandoned [by the natural parents,] or received with a bride, or born of a twice-married woman, or given, or self-given, or made, or bought; shall be entitled to the third part of the share of a true son. So DE'VALA, after having described the twelve sons, expressly declares, "These "twelve sons have been propounded for the purpose of off- "spring: being sons begotten by a man himself, or procreated "by another man, or received [for adoption,] or voluntarily "given. Among these, the first six are heirs of kinsmen, and "the other six inherit only from the father: the rank of sons "is distinguished in order as enumerated. All these sons "are pronounced heirs of a man who has no legitimate issue "by himself begotten: but, should a true legitimate son "be afterwards born, they have no right of primogeniture. "Such, among them, as are of equal class [with the father,] "shall have a third part as their allotment: but those of a "lower tribe must live dependent on him supplied with food "and raiment."

take a third; according to DE'VALA.

8. The true legitimate son and the rest, to the number of six, are not only heirs of their father, but also heirs of kinsmen; that is, of *Sapin'd'as* and other relations. The others are successors of their [adoptive] father, but not heirs of collateral relations (*Sapin'd'as*, &c.)

8. Six heirs to kinsmen; and six heirs to the adopter.

9. They take the whole estate of a father, who has no legitimate issue by himself begotten; but, if there be a true son, such of them, as are of the same tribe with the father, take a third part.

9. They share with a true son.

Annotations.

Among these, the first six are heirs.] The first six, from the true legitimate son to the son rejected by his natural parents, are heirs of kinsmen; that is, of uncles and the rest. The others, from the son of a pregnant bride, to the son bought, are heirs of the [adoptive] father alone. MAHE'S'WARA.

Such among them as are of equal class.] The *cshétraja* or issue of the wife, being son of a *Bráhman'a* by a *Bráhman'í*, is superior by tribe compared with the legitimate issue of a *Vais'ya* wife, and belongs to the same class with the adoptive father. So in other instances. S'RÍCRÍSHN'A.

10. Also with the appointed daughter.

10. Since the appointed daughter is equal to the true legitimate son, the same order of distribution must be observed in her case.

11. Another allotment stated

11. But those [adopted sons,] who are inferior by class to the father, yet superior to his legitimate son, shall take the fifth or the sixth part of a legitimate son's share, according to their good qualities, or the want of such qualities.* Thus

by MENU.

MENU says: "Let the legitimate sons, "when dividing the paternal heritage, give "a sixth part, or a fifth, of the patrimony, to the son of the "wife."†

12. Since all adopted sons are, in DE'VALA's text, (§ 7,) equal to the wife's son, the term *cshétraja* (son of the wife) is, in MENU's text, indefinite [and comprehends other descriptions of sons.]

13. Food and raiment allowed, if

13. But such as are inferior by class to the father, and to their brother, his legi-

Annotations.

10. *The same order of distribution.*] If there be an appointed daughter,‡ the rest share a third part only. CHU'DA'MAN'I.

The same order of distribution, that is, the allotment of a third part, which has been directed for them at a division with the legitimate son, takes effect at a partition with an appointed daughter. For this very reason, the appointed daughter is exhibited first in the enumeration of twelve sorts of sons. S'RÍCRÍSHN'A.

11. *According to their good qualities, &c.*] According as they have good qualities, or are deficient in them. In fact, it is fit that the adopted son, inferior by class to the father, but belonging to the same tribe with the legitimate son, should have a sixth part; or, if he belong to a superior tribe, a fifth: else, no allotment being specified for one inferior to the father but equal to the legitimate son, there would be a deficiency in the provisions of the law. S'RÍCRÍSHN'A.

12. *Since all . . . are equal.*] For equal allotments are propounded for them. S'RÍCRÍSHN'A.

13. *Pity.*] Commiseration: for the sake of that. Therefore his own choice, not their right, is the motive for giving them a maintenance. Here maintenance signifies a subsistence. S'RÍCRÍSHN'A

Sharers of a third part.] The *Mitácshara*, with certain other authorities, reads 'a fourth part.' See *Mitácshara* on Inheritance, C. 1. Sect. 11. § 25.

* S'RÍCRÍSHN'A and ACHYUTA notice a variation in the reading, (*Gun'advadagun'atayá*, and *Gun'aradagun'ápéshayá*.) which does not, however, make any material difference in the sense.

† MENU, 9. 164.

‡ The commentator appears to have read *putricáyá api* instead of *putricáyá api*

they are of lower tribes, as directed by MENU;

timate son, are entitled only to food, and raiment. So MENU declares: "The legi- "timate son is the sole heir of his father's "estate: but, for the sake of pity, he should give a "maintenance to the rest."* Thus CA'TYA'-YANA says, "If a legitimate son be born, the rest or pronounced sharers of a third "part, provided they belong to the same tribe [with the "father;] but, if they be of a different class, they are enti- "tled to food and raiment only."

and by CA'TYA'-YANA.

14. Exposition of the passages.

14. The term "the rest" in the text of MENU, as well as the phrase "if they be of a different "class" in that of CA'TYA'YANA, signify one of inferior tribe: conformably with the text of DE'VALA. (§ 7.)

15. Special case of a true son and a son of the wife, stated by MENU.

15. MENU states the distribution between a true son, and the issue of the wife produced without due authority. "If there be two sons, "a legitimate one, and the son of a wife, "claiming the estate of the same person, "each shall take the property which belonged to his father; "and not the other."†

16. Exposition of the text.

A passage of NA'REDA cited.

16. Let each receive the wealth of him, from whose seed he sprung: and let not the other take it, who sprung from the seed of another person. Accordingly NA'REDA says, "if two "sons, begotten by two fathers, contend "for the wealth of the woman, let each of "them take that which was his father's property; and not "the other."‡

17. And explained.

17. The wealth, appertaining to the woman, which was given to her by the respective fathers, let the son of each father severally take: and not the other. It would be needless to enlarge.

Annotations.

17. *The wealth appertaining to the woman.*] The wealth of the woman, in NA'REDA's text, signifies property which has come into her hands [by inheritance.] For, if it were her own peculiar property, they would have equal shares of it. MAHE'S'WARA.

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* MENU, 9. 163. † Ibid. 9. 162.

‡ Ibid. 9. 191. and cited from his Institutes by numerous compilers; but referred by JÍMU'TA-VA'HANA and RAGHUNANDANA to NA'REDA. It is not, however, found in the Institutes of this author.

CHAPTER XI.

On succession to the Estate of one who leaves no male issue.

SECTION I

On the Widow's right of Succession.

1. Opinions vary as to the order of succession on failure of male issue.

1. IN regard [to succession*] to the wealth of a deceased person, who leaves no male issue, authors disagree, in consequence of finding contradictory passages of law.

2. VRĬHASPATI declares the wife to have a preferable title; before parents and collaterals.

2. Thus VRĬHASPATI says, "In Scripture and in the "code of law, as well as in popular prac-"tice, a wife is declared by the wise to be "half the body of her husband, equally "sharing the fruit of pure and impure acts. "Of him, whose wife is not deceased, half "the body survives. How then should another take his "property, while half his person is alive? Let the wife of a "deceased man, who left no male issue, take his share, not-"withstanding kinsmen, a father, a mother, or uterine bro-"ther, be present.† Dying before her husband, a virtuous

* S'RICRISHN'A.

† Vide Infra. § 54

"wife partakes of his consecrated fire : or, if her husband "die [before her, she shares] his wealth : this is a primeval "law. Having taken his movable and immovable pro-"perty, the precious and the base metals, the grains, the "liquids, and the clothes, let her duly offer his monthly, "half-yearly, and other funeral repasts. With presents "offered to his manes, and by pious liberality, let her "honour the paternal uncle of her husband, his spiritual "parents and daughter's sons, the children of his sisters, his "maternal uncles, and also ancient and unprotected per-"sons, guests, and females [of the family.]* Those near "or distant kinsmen, who become her adversaries, or who "injure the woman's property, let the king chastise by in-"flicting on them the punishment of robbery."

3. 'The widow succeeds to her husband if there be no sons.

3. By these seven texts VRĬHASPATI having declared that the whole wealth of a deceased man, who had no male issue, as well the immovable as the movable property, the gold and other effects, shall belong to his widow, although there be brothers of the whole blood, paternal uncles, [daughters,†] daughter's sons and other heirs ; and having directed, that any of them, who become her competitors for the succession, or who themselves seize the property, shall be punished as robbers ; totally denies the right of the father, the brothers, and the rest, to inherit the estate if a widow remain.

Annotations.

2. *Partaker of his consecrated fire.*] After her decease, her body is burnt with fire taken from his consecrated hearth. MAHE'S'WARA.

Let her duly offer.] The causative verb is used in the original, with the sense of the simple verb, according to the remark of CHU'DA'MAN'I and S'RÍCRĬSHN'A.

Monthly, half-yearly, &c.] The text is read by ACHYUTA "yearly, half-yearly" *vatsa shan-másicádicam* ; and he notices as a variation the other reading, "monthly, half-yearly" *mása-shán másicádicam*. RAGHUNANDANA on the contrary states the former as a variation, considering the latter as the common reading of the text.

3. *By these seven texts.*] The passage above cited comprises seven stanzas

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* Vide Infra § 63. † CHU'DA'MAN'I.

4. She is first in YA'JNYAWALCYA'S enumeration.

4. In like manner YA'JNYAWALCYA says, "The wife "and the daughters, also both parents, bro- "thers likewise and their sons, gentiles, "cognates, a pupil and a fellow-student: "on failure of the first among these, the "next in order is indeed heir to the estate of one, who "departed for heaven leaving no male issue. This rule "extends to all persons and classes."* Thus affirming the right of the last-mentioned on failure of the preceding, the sage propounds the succession of the widow in preference to all the other heirs.

5. And first in VISHN'U'S.

5. So VISHN'U ordains: "The wealth of him, who "leaves no male issue, goes to his wife; "on failure of her, it devolves on daugh- "ters; if there be none, it belongs to the "father; if he be dead, it appertains to the mother; on "failure of her, it goes to the brothers; after them, it "descends to the brother's sons; if none exist, it passes to "the kinsmen (*bandhu*); in their default, it devolves on "relations (*saculya*): [failing them, it belongs to the "pupil:‡] on failure of these, it comes to the fellow-student: "and, for want of all those heirs, the property escheats to "the king; excepting the wealth of a *Bráhman'a*."†

Annotations.

4. *Leaving no male issue.*] This implies failure of son, son's son, and son of the grandson. For these are equally givers of funeral oblations at periodical obsequies. RAGH. *Dáyatatwa.*

5. *Devolves on daughters.*] Some copies of JÍMU'TA-VA'HANA insert a sentence; "if there be none, it descends to daughter's sons." This clause is not noticed by VISHN'U'S commentator; nor inserted by various compilers, though it be admitted by RAGHUNANDANA, who also makes another addition in a subsequent part of the text, respecting the pupil.

If there be none, it belongs to the father; if he be dead, it appertains to the mother.] In the text, as it is exhibited in the *Retnácara, Chintáman'i*, and other compilations, these sentences are transposed: a reading which is censured by ACHYUTA and S'RÍCRĬSHN'A commenting upon this passage.

If none exists, it passes to kinsmen; in their default, it devolves on relations.] The words *bandhu* and *saculya*, here translated kinsmen and relations, are read in this order by the scholiast of VISHN'U and by the author of the *Calpataru* and most other authorities. But the terms are transposed in the *Madana-ratna*. Either way, the same order of succession is intended: first, the near kindred, *sapin'd'as* and *sagótras*: and last, the remoter kindred.

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* YA'JNYAWALCYA, 2. 136.—137. † VISHN'U, 17. 4.—13. ‡ RAGH. *Dáyatatwa.*

6. By this text, relating to the order of succession, the right of the widow, to succeed in the first instance, is declared. It must not be alleged, that the mention of the widow is intended merely for the assertion of her right to wealth sufficient for her subsistence. For it would be irrational to assume different meanings of the same term used only once, by interpreting the word wealth as signifying the whole estate in respect of brothers and the rest, and not the whole estate in respect of the wife. Therefore, the widow's right must be affirmed to extend to the whole estate.

6. The passages above cited do not allot her a mere subsistence.

7. Thus *Vrïhat* MENU says, "The widow of a childless "man, keeping unsullied her husband's bed, "and persevering in religious observances, "shall present his funeral oblation and "obtain [his] entire share."

7. But her husband's share, as in a passage of *Vrïhat* MENU.

8. "His" is repeated or understood from the words "his funeral oblation;" for that term alludes to her husband. The meaning therefore is, 'the wife shall obtain her hus-'band's entire share;' not 'she shall obtain her own entire 'share;' for the direction, that 'she shall obtain,' would be impertinent, in respect of her own complete share. Since the intention of the text is to declare a right of property, it ought not to be interpreted as declaring such right in regard to the person's own share; for that is known already from the enunciation of it as that person's share, [and it need not therefore be declared.]

8. Exposition of the text.

Annotations.

7. *His entire share.*] In the commentary on JIMU'TA-VA'HANA which bears RAGHUNANDANA'S designation, another reading of the text is noticed: viz., *critsnam art'ham* 'the entire estate,' instead of *crits'nam ans'am*, 'the entire share.' That reading is countenanced by the *Retnácara* and *Chintáman'i*; and if it be the genuine text, the whole of JÍMU'TA VA'HANA'S argument in the subsequent paragraphs (to § 13) falls to the ground. But the *Víramitródaya* and *Smrïtichandrica*, agree with JÍMU'TA-VA'HANA in the reading of this passage.

9. *Taking.*] such taking as consists in disposal at pleasure. S'RÍCRÍSHN'A.

9. A different interpretation refuted.

9. Nor should it be said, that the intention of the text is to authorize the taking [or using] of the goods, [not to declare the right of property ;*] for the taking or using of one's own property is a matter of course.

10. The text is no injunction.

10. Nor can the text be supposed to intend a positive injunction [that she should take her own share.†] For its purpose would be spiritual ; and, if it were an injunction, a person who commanded and other particulars [as in the omission, &c.‡] must be inferred.

11. Nor can it intend the allotment of a share only.

11. It is alleged, that, as in the passage, "let a son, "who is neither blind nor otherwise dis-"qualified, take an entire share," [the meaning is,||] not 'his father's entire share' but 'his own complete allotment ;' so, in this instance likewise, the terms are [interpreted as §] relative to the widow's own complete allotment. That is not accurate ; for since there is no such passage of law as that stated, the example is impertinent ; or admitting that there is, still, since for the reason before-mentioned it would be impertinent as a precept, [the alleged example¶] will be rightly interpreted as relative to the father's share.

12. Authors are not at the pains of declaring a man's right of property in that which is his own.

12. Accordingly [since the scope of the precept cannot be to declare a right of property in a person's own wealth ;**] the sages do, in all instances, propound the right of a different person [as heir,] to the wealth of another [who is his predecessor ;] for example, that of sons to the paternal estate ; and that of widows and the rest to the goods of a man who leaves no male issue ; and so in other cases. They do not needlessly bid a person take his own share.

Annotations.

11. *Relative to the father's share.*] MAHE'S'WARA censures this reading, (which is S'RÍCRÏSHN'A's,) and substitutes for *pitrans'ápécsham, patyans'ápécsham* 'relative to the husband's share.' On this reading, the whole passage must be translated, 'since for reasons before-mentioned it would be impertinent as 'a precept, [the text §7] will be rightly interpreted as relative to the husband's 'share.'

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* S'RÍCRÏSHN'A. † Ibid. ‡ CHU'DA'MAN'I, S'RÍCRÏSHN'A, &c.
|| S'RÍCRÏSHN'A. § CHU'DA'MAN'I and ACHYUTA.
¶ S'RÍCRÏSHN'A. ** Ibid.

13. The text does not intend her share.

13. It is alleged, that by the mention of the relative, the correlative is suggested; and thus, when the word mother is [singly] employed, it is not understood to intend a stranger's mother. This objection is irrelevant; for the maxim is applicable where the correlative is not specified: and thus, when it is said "call D'ITT'HA's mother," neither the mother of the messenger, nor of the sender, is supposed to be meant. In like manner, since the correlative is here indicated by the pronoun in the phrase "his funeral oblation," how can [the word share*] refer to the wife? And the incongruity of supposing the text to be an injunction, has been already shown (§ 10.)

14. Conclusion in regard to the interpretation of the passage (§ 7.)

14. Therefore, it is demonstrated, that *Vrihat* MENU (§ 7,) declares the widow's right of taking his [that is, her husband's†] entire share.

15. Texts of an apparent contrary import occur, viz., a passage of S'ANC'HA, PAIT'HI'NASI, &c.

15. Passages of various authors, which declare the contrary of the widow's right of succession, are the following. S'ANC'HA, LIC'HITA, PAIT'HI'NASI and YAMA say, "The wealth of a "man, who departs for heaven, leaving no "male issue, goes to his brothers. If there "be none, his father and mother take it, "or his eldest wife, or a kinsman *(sagótra)*, a pupil, or a "fellow-student."

Annotations.

14. *Vrihat* MENU *declares the widow's right of taking her husband's entire share.*] On failure of male issue, the widow succeeds to the whole estate, whether joint or several, and consisting of immovables or movables. So JÍMU'TA-VA'HANA and the rest maintain. However, [VA'CHESPATI] MISRA holds, that, in the case of separate property, the widow inherits; but, in the instance of undivided wealth, the brothers are heirs, and the widow only shares food and raiment. CA'S'IRA'MA on *Dáyatatwa*.

15. *Eldest wife.*] In the *Calpataru* and *Retnácara*, the text is read *patní va'jyesht'ha* 'a wife not eldest;' that is, according to CHAN'D'E'S'WARA's interpretation, 'fulfilling some but not all the duties of a faithful widow.' This reading is noticed in RAGHUNANDANA's commentary, but with a different interpretation, viz., 'youngest wife.' In the *Víramitródaya*, the text is written *jyésht'há vá patní;* which removes all ambiguity, and confirms the version of JÍMU'TA-VA'HANA's reading, *patní vá jyésht'ha.*

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* S'RÍCRISHN'A. † CHU'DA'MAN'I, S'RÍCRISHN'A, and MAHE'S'WARA.

16. Which prefers the brothers and the parents to the wife.

16. Here, in contradiction to the preceding texts, the succession of the father and mother, if there be no brother, or that of the wife, if they be both dead, is propounded.

17. Also a passage of DE'VALA.

17. So DE'VALA ordains: "Next let brothers of the "whole blood divide the heritage of him "who leaves no male issue, or daughters "equal [as appertaining to the same tribe*]; "or let the father if he survive, or [half†] brothers belong-"ing to the same tribe, or the mother, or the wife, inherit "in their order. On failure of all these, the nearest of the "kinsmen succeed."‡

18. Which places the brothers first and the widow last.

18. Here the contradiction is, the brother being placed first of all the heirs, and the widow last.

19. That cannot be reconciled, referring the brother's succession to the case of union, and the wife's to the instance of separation.

19. Some reconcile the contradiction by saying, that the preferable right of the brother supposes him either to be not separated or to be re-united; and the widow's right of succession is relative to the estate of one, who was separated from his co-heirs, and not re-united with them.

20. It would contradict VRÍHASPATI.

20. That is contrary to a passage of VRÍHASPATI, who says, "Among brothers, who become re-"united, through mutual affection, after "being separated, there is no right of senio-"rity, if partition be again made. Should any one of them "die, or in any manner depart [by entering into a reli-"gious order,§] his portion is not lost, but devolves on his "uterine brother. His sister also is entitled to take a share "of it. This law concerns one who leaves no issue, nor

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Annotations.

17. *If* (dhriyamán'a) *he survive.*] Being alive. RAGH. *Dáyatatwa.*

Being capable of the succession. This excludes one degraded or otherwise disqualified. S'RÍCRÍSHN'A and CA'S'IRA'MA.

19. *Some reconcile the contradiction by saying.*] The doctrine of the *Mait'hila* school is here stated. MAHE'S'WARA.

20. *His sister also is entitled to a share.*] His unmarried sister, whose father

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* S'RÍCRÍSHN'A and AÇHYUTA.

† CHU'DA'MAN'I, &c.

‡ Vide Infra. § 50. and Sect. 5. § 6.

§ S'RÍCRÍSHN'A and ACHYUTA.

"wife, nor parent. If any one of the re-united brethren "acquire wealth by science, valour, or the like, [with the "use of the joint stock,*] two shares of it must be given to "him, and the rest shall have each a share."†

21. Who intimates the wife's preferable right in the instance of re-united brethren.

21. Here, since re-union of parceners is specified at the beginning and at the close of the text, the intermediate passage, "his share is not "lost, but devolves on his uterine brother," must be understood as relating to a re-united parcener. And the author, saying "this law concerns one who leaves no issue, nor wife, nor "parent," declares the right of a re-united uterine brother as taking effect on failure of son, daughter, widow, and parents. How then does [the re-united brother‡] bar the widow's title to the succession?

22. The text must relate to re-united co-heirs.

22. Besides the text expresses, that "his share is not lost;" and the expression is pertinent in regard to unseparated parceners and re-united co-heirs, since the lapse of the share might be supposed, because the property, being intermixed with another brother's effects, is not seen apart; but, the property of a separated co-heir being distinctly perceived in a separate state, what room is there for supposing its lapse? Therefore, these texts [of VRĬHASPATI§, vide § 20] relate to re-united co-heirs.

23. The proposed mode of reconciling the seeming con-

23. Moreover, the inference, that the texts of S'ANC'HA and others above cited, (§ 15, &c.,) which declare the preferable right of the brother before the widow and the rest, relate to a

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is deceased, is entitled to take out of her deceased brother's share, a portion or allotment to defray the expense of her marriage. But, if it cannot be defrayed with that, she may likewise take from the surviving brother. MAHE'S'WARA.

If unmarried, she takes a portion sufficient to defray the charges of her nuptials. If a widow, she receives a maintenance. ACHYUTA.

Some say, that, if she be a widow, she receives a maintenance. S'RÍCRĬSHN'A.

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* CHU'DA'MAN'I.

† In this passage, (as it stands in the *Retnácara* and other compilations), there are several variations of the reading: but not materially affecting the sense.

‡ MAHE'S'WARA. § S'RÍCRĬSHN'A, &c.

tradiction (§ 19) is unsupported by positive texts.

re-united brother, [as well as an unseparated one,*] must be drawn either from the authority of a text of law or from reasoning. Now it is not deducible from a text of law; for there is none which bears that meaning expressly; and the passages, concerning the succession of the re-united parcener (sect. 5. § 13) containing special provisions regarding the brother's succession, cannot intend generally the right of a brother to inherit [to the exclusion of a widow.†]

24. The preceding passages (§ 15, &c.) do not relate to unseparated and re-united co-heirs.

24. Since the texts of VRĬHASPATI just now cited (§ 20) contradict that inference; for the brother's right is there declared to take effect, in the case of re-union, on failure of son, daughter, widow and parents; brethren not re-united must be the subject [of those passages of S'ANC'HA, &c., § 15.] That alone is right; and they do not relate to [unseparated and] re-united brethren.

25. It is equally unsupported by reasoning.

25. But it is said, this inference is deduced from reasoning. Thus, in the instance of re-union, [or in that of a subsisting co-parcenery,‡] the same goods, which appertain to one brother, belong to another likewise. In such case, when the right of one ceases by his demise, those goods belong exclusively to the survivor, since his ownership is not divested. They do not belong to the widow: for her right ceases on the demise of her husband; in like manner as his property devolves not on her, if sons or other [male descendants] be left.

26. For the proposed reasoning is confuted.

26. That argument is futile. It is not true, that, in the instance of re-union [and of a subsisting co-parcenery, §] what belongs to one, appertains also to the other parcener. But the property is referred severally to unascertained portions of the aggregate. Both parceners have not a proprietary right to the whole; for there is no proof to establish their ownership of the whole: as has been before shown [when defining the term partition of heritage ¶] Nor is there any proof of the position, that the wife's right in her husband's property, accruing to her from her marriage, ceases on his demise. But the cessation of the widow's right

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* MAHE'S'WARA. † Ibid. ‡ Ibid.
§ Ibid. ¶ Ibid. Vide C. 1.

of property, if there be male issue, appears only from the law ordaining the succession of male issue.

27. An objection answered.

27. If it be said, that the cessation of her right, in this instance also, does appear from the law which ordains the succession of the re-united parcener: the answer is, no, for it is not true that the text relates to re-united parceners; since the law, which declares the brother's right of succession, may relate to re-united brethren, if it be true, that the widow's right of ownership ceases by the demise of her husband who was re-united with his co-heirs; and the widow's proprietary right does so cease, provided the law relate to the case of re-united brethren. Thus the propositions reciprocate.

28. A further reason stated.

28. Besides, if the texts of S'ANC'HA, LIC'HITA, and the rest, (§ 15, &c.) relate to unseparated or re-united parceners, they must be interpreted as signifying, that 'the wealth of 'one, who is either unseparated or re-united, goes to a bro- 'ther who is so; or, if there be none such, the two parents 'take it.' In that case, a question may be proposed, shall parents, who are separated and not re-united, take the heritage? or parents who are either unseparated or re-united? Here the first proposition is not admissable; for how can the claim of parents, who are separated and not re-united, be preferred to the wife's, since they are excluded by her, under the passage before cited? Nor is the second proposition maintainable; for all agree, that a father, being unseparated or re-united, takes the heritage in preference to an unseparated or re-united brother.

29. An additional argument set forth.

29. Moreover, as in the instance of the estate of one, who was separated from, and not re-united with, his father and his brother, the father has the right of succession before brothers, because he has authority over the person and wealth of his son; since he gave him life; (for their identity is affirmed in holy writ, where it is said "he himself is born "a son:"*) and because the deceased, by participating [with the manes of the grandfather and great grandfather†] in

* See essay on the *Védas*. As. Res. vol. 8. p. 412. † MAHE'S'WARA.

funeral offerings, partakes of two oblations of food which his father must present to the grandfather and great grandfather [at the same time that none are presented by his brother,]* for sons do not offer the half-monthly oblations of food, while their father lives ; so the same [preference of the father before the brother] is fit in the other instance [of the estate of one who is either unseparated or re-united.†] Or, since they are alike in respect of co-parcenery and re-union, the equal right of father and son would be proper, not the postponement of the father's claim to the brother's.

30. The proposed explanation is insufficient.

It is inconsistent with VRĬHASPATI'S definition of re-union.

Interpretation of the text.

30. Further, the dual number, expressing, that 'parents, who are unseparated or re-united, 'take the heritage,' is unsuitable : for there is neither partition, nor co-parcenery, with the mother ; and consequently no re-union of estates ; since VRĬHASPATI says, "He, "who being once separated, dwells again, "through affection, with his father, brother, "or paternal uncle, is termed re-united.‡ He thus shows, that persons, who by birth have common rights in the wealth acquired by the father and grandfather, as father [and son,] brothers, uncle [and nephew,] are re-united, when, after having made a partition they live together, through mutual affection, as inhabitants of the same house, annulling the previous partition, and stipulating, that "the property, which is mine, is thine ; "and that, which is mine, is thine." The partnership of traders, who are not so circumstanced, and only act in concert on an united capital, is no re-union. Nor are separated co-heirs re-united merely by junction of stock, without an agreement prompted by affection as above stated. Therefore, since neither re-union nor co-parcenery with a mother can exist, how is the contradiction in regard to the succession devolving on her before brothers, to be reconciled?

Annotations.

29. *Alike in respect of co-parcenery and re-union.*] A variation in the reading of this passage is noticed by MAHE'S'WARA, viz., *sansrĭsht'atwayóh* for *sansargayóh* ; but no material difference results from it in the import of the passage.

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* S'RÍCRĬSHN'A. † Ibid. ACHYUTA, &c. ‡ Vide Infra, C. 12. § 3.

31. Approved mode of reconciling the apparent contradiction.

31. In the next place, the manner in which the difficulty is removed by the wise, will be stated. From the texts of VISHN'U, (§ 5), and the rest [as YA'JNYAWALCYA, &c.* § 4] it clearly appears, that the succession devolves on the widow, by failure of sons and other [male descendants :] and this is reasonable ; for the estate of the deceased should go first to the son, grandson, and great grandson. Thus MENU and VISHN'U say, "Since a son delivers [*tráyaté*] his father from the hell called *put* ; "therefore he is named *puttra* by the self-existent himself."†

Sons confer benefits on their father: as appears from passages of MENU and VISHN'U,

HA'RI'TA.

So HA'RI'TA says, "A certain hell is named "*put* ; and he, who is destitute of offspring, "is tormented in hell. A son is therefore called *puttra*, "because he delivers his father from that region of horror."

S'ANC'HA and LICHITA,

In like manner, S'ANC'HA and LIC'HITA declare, "A father is exonerated in his life-"time from debt to his own ancestors, "upon seeing the countenance of a living son: he be-"comes entitled to heaven by the birth of his son, and de-"volves on him his own debt. The sacrificial hearth, the "three *védas*, and sacrifices rewarded with ample gratui-"ties, have not the sixteenth part of the efficacy "of the birth of an eldest son."‡

MENU, &c.

Thus MENU, S'ANC'HA, VASISHT'HA, LIC'HITA, and HA'RI'TA ordain, "By a son, a man conquers worlds; by "a son's son, he enjoys immortality ; and, afterwards,

Annotations.

31. *The manner in which the difficulty is removed by the wise.*] By HELA'YUD'HA and others who maintain the same doctrine with us. S'RÍCRÍSHN'A and ACHYUTA.[1]

Is tormented in hell.] ACHYUTA and MAHE'S'WARA explain *nairaya* one who goes to a place of torment *(niraya)*. But S'RÍCRÍSHN'A contradicts that exposition. Consistently with one interpretation, the sense is, that 'he, who is 'destitute of progeny *(chinnatantu)*, will be tormented in hell.' According to the other, a separate place of torment is here mentioned under the name of *Chinnatantu*.

The attainment of worlds, immortality, and heaven.] There is a difference in the reading of the text, *lócánantyan divah praptih* "Immortality in the world "and the attainment of heaven," instead of *lócánantya-divah praptih* "attain-"ment of worlds, immortality, and heaven." A corresponding difference of interpretation is found in the commentaries of VIJNYA'NE'S'WARA, APARA'RCA and SU'LAPA'N'I.

* CHU'DA'MAN'I and S'RÍCRÍSHN'A.

† MENU, 9. 138. VISHN'U, 15. 43. Vide Supra. C. 5. § 6.

‡ The first stanza occurs in the Institutes of ATRI, 53.

and YA'JNYAWALCYA.

" by the son of a grandson, he reaches the " solar abode."* So YA'JNYAWALCYA says, " The attainment of worlds, immortality, and heaven, " depend on a son, grandson, and great grandson."†

32. The benefit conferred is the reason of their succession.

32. Thus the proprietary right of sons and the rest is expressly ordained, as already inferrible from reasoning ; because the wealth, devolving upon sons and the rest, benefits the deceased : since sons or other male descendants produce great spiritual benefit to their father or ancestor from the moment of their birth ; and they present funeral oblations, half-monthly, in due form, after his decease.

MENU.

So MENU declares the right of inheritance to be founded on benefits conferred : " By " the eldest son as soon as born, a man becomes the father " of male issue, and is exonerated from debt to his ancestors ; such a son, therefore, is entitled to take the herit- " age."‡

33. Assents to this doctrine.

33. From the mention of it as a reason (" therefore," &c.) and since there can be no other purpose in speaking of various benefits derived from sons and the rest, while treating of inheritance, it appears to be a doctrine to which MENU assents, that the right of succession is grounded solely on the benefits conferred.

34. Therefore the right extends to the great grandson.

34. Accordingly [since benefits are derived from the great grandson as well as from the son,§] the term " son" [in the text of MENU,|| § 32, or in that of VISHN'U,¶ § 5, or in those of YA'JNYAWALCYA, &c.**) extends to the great grandson ; for, as far as that degree, descendants equally confer benefits by presenting oblations of food in the prescribed form of half-monthly obsequies.

35. Reason of his inference.

35. Else [if it were not inferrible from reason,†† or if MENU did not mean, that

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32. *Expressly ordained, as already inferrible from reason.*] Ordained by a passage of the *Véda* founded on reason. S'RÍCRÍSHN'A.

Suggested by reason and also ordained in express terms. MAHE'S'WARA.

* MENU, 9. 137. VASISHT'HA, 17. 5. Also VISHN'U, 15. 45.

† YA'JNYAWALCYA, 1. 78.

‡ MENU, 9. 106. Vide Supra. C. 1. § 36.

§ MAHE'S'WARA.

|| CHU'DA'MAN'I.

¶ MAHE'S'WARA.

** ACHYUTA.

†† S'RÍCRÍSHN'A and ACHYUTA.

the right of succession rests upon benefits conferred;*] the word son could not quit its proper sense [for a larger import;] and a passage, declaratory of the grandson's right, must be somehow assumed. But, admitting that such a passage may be assumed [as inferrible from the declared right of a daughter's son considered as a son's son;†] still there is no separate text concerning the great grandson.

36. His right rests on the benefits conferred by him.

36. Therefore the great grandson's right of succession is founded on benefits derived from him; and the word son is of comprehensive import.

37. Baud'ha'yana intimates as much, in enumerating *Sapin'd'as.*

37. Accordingly Baud'ha'yana says; "The paternal "great grandfather and grandfather, the "father, the man himself, his brothers of "the whole blood, his son by a woman of "the same tribe, his son's son and his great "grandson: all these, partaking of undivided oblations, are "pronounced *sapin'd'as.* Those, who share divided oblations, "are called *saculyas.* Male issue of the body being left, "the property must go to them. On failure of *sapin'd'as* or "near kindred, *saculyas,* or remote kinsmen, are heirs. If "there be none, the preceptor, the pupil, or the priest, takes "the inheritance. In default of all these, the king [has "the escheat."]

38. Exposition of his text.

38. The meaning of the passage is this: since the father and certain other ancestors partake of three funeral oblations as participating in the offerings at obsequies; and since the son and other descendants, to the number of three, present oblations to the deceased [or to be shared by his manes;‡] and he, who, while living, presents an oblation to an ancestor, partakes, when deceased, of oblations presented to the same person; therefore, such being the case, the middlemost [of seven,§] who, while living, offered food to the manes of

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Annotations.

37. *Partaking of undivided oblations.*] The terms of the text are interpreted very differently in the *Retnácara.*

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* Mahe's'wara.

† S'rícrishn'a, Achyuta, and Mahe's'wara.

‡ Mahe's'wara.

§ Ibid.

ancestors, and when dead partook of offerings made to them, became the object to which the oblations of his descendants were addressed in their life-time, and shares with them when they are deceased, the food which must be offered by the daughter's son and other [surviving descendants beyond the third degree.*] Hence those [ancestors,] to whom he presented oblations, and those [descendants,] who present oblations to him, partake of an undivided offering in the form of *(pin'da)* food at obsequies. Persons, who do partake of such offerings, are *sapin'd'as.* But one distant in the fifth degree neither gives an oblation to the fifth in ascent, nor shares the offering presented to his manes. So the fifth in descent neither gives oblations to the middle person who is distant from him in the fifth degree, nor partakes of offerings made to him. Therefore three ancestors, from the grandfather's grandfather upwards, and three descendants from the grandson's grandson downwards, are denominated *saculyas,* as partaking of divided oblations, since they do not participate in the same offering.

39. The relation of *sapin'd'as* regards inheritance.

39. This relation of *sapin'd'as* [extending no further than the fourth degree,†] as well as that of *saculyas,* has been propounded relatively to inheritance.

40. Corroborated by a passage of MENU.

40. Accordingly [since the right of succession to property is founded on competence for offering oblations at obsequies,‡] MENU likewise, after premising "Not brothers, nor parents, "but sons, are heirs of the father;"§ proceeds, in answer to the question why? to declare, "To three must "libations of water be made, to three must oblations of "food be presented; the fourth in descent is the giver of "those offerings; but the fifth has no concern with them."||

Annotations.

39. *This relation has been propounded relatively to inheritance.*] But those, who partake of the remnants of oblations, bear the same designation [of *sapin'd'as*] relatively to mourning, marriage, &c. *Sudd'hitatwa* and *Dáyatatwa.*

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* MAHE'S'WARA. † S'RÍCRĬSHN'A and ACHYUTA. ‡ MAHE'S'WARA.
§ MENU, 9. 185. || Ibid. 9. 186. Vide Infra. Sect. 6. § 7.

41. For mourning and other purposes, the relation of sapin'd'as is more comprehensive: according to a passage of the Márcan'd'éya purán'a;

41. But for mourning and other purposes, the relation of *sapin'd'as* extends to such as partake of the remains of oblations; for that relation is defined in the *Márcan'd'éya purán'a* as founded on participation in the wipings of offerings. "Three others, from the "grandfather's grandsire upwards, are de-"clared to be partakers of the residue of "oblations; they, and the person who per-"forms the religious rite, being seventh in descent, consti-"tute that relation, which is termed by the holy sages kin "within the seventh degree."* The meaning here is kin which occasions impurity [on occasions of deaths and births.]

42. And one of MENU.

42. Accordingly MENU likewise has said, when treating of uncleanness by reason of mourning, &c., "The relation of *sapin'd'as* ceases "with the seventh person [in ascent or des-"cent;] and that of *samánódacas* ends only where birth "and family name are no longer known."† Else this passage would be in contradiction to the text before cited: "To three must libations of water be made, &c." (§ 39.)

43. The widow, conferring spiritual benefits on her husband in the next degree to the male issue, succeeds on failure of it.

A passage of VYA'SA.

43. But, on failure of heirs down to the son's grandson, the wife, being inferior in pretensions to sons and the rest, because she performs acts spiritually beneficial to her husband from the date of her widowhood, [and not, like them, from the moment of their birth,‡] succeeds to the estate in their default. Thus VYA'SA says, "After the death of "her husband, let a virtuous woman ob-"serve strictly the duty of continence; and let her daily, "after the purification of the bath, present water from the

Annotations.

43. *The wife being inferior to sons, because she performs acts spiritually beneficial from the date of her widowhood.*] CHU'DA'MAN'I's interpretation of his author's meaning is followed in this version. ACHYUTA dissents from it; and maintains, that the performance of acts of spiritual benefit is here stated as the reason of the widow's succession; and her incapacity for presenting oblations at the half-monthly obsequies is the reason of her inferiority to sons, and of the consequent postponement of her claim. His explanation, and the reasoning by which it is supported, are refuted by S'RÍCRĬSHN'A and MAHE'S'WARA.

* *Márcan'd'éya purán'a*, 28. 4. in the story of *Madálasá*.

† MENU, 5. 60.

‡ CHU'DA'MAN'I, S'RÍCRĬSHN'A, and MAHE'S'WARA.

"joined palms of her hands to the manes of her husband. "Let her day by day perform with devotion the worship of "the gods, and especially the adoration of VISHN'U, practis-"ing constant abstemiousness. She should give alms to "the chief of the venerable for increase of holiness and "keep the various fasts which are commanded by sacred "ordinances. A woman, who is assiduous in the perform-"ance of duties, conveys her husband, though abiding in "another world, and herself [to a region of bliss."*]

44. Shows, that her good or bad conduct affects her husband in another world.

Wealth, devolving on her, is beneficial to him.

44. Since by these and other passages it is declared, that the wife rescues her husband from hell; and since a woman, doing improper acts through indigence, causes her husband to fall [to a region of horror;] for they share the fruits of virtue and of vice; therefore the wealth devolving on her is for the benefit of the former owner: and the wife's succession is consequently proper.

45. Proper interpretation of the text of S'ANC'HA, &c. [§ 15.]

45. Hence [since the wife's right of succession is founded on reason,†] the construction in the text of S'ANC'HA, &c., (§ 15), must be arranged by connexion of remote terms in this manner, 'The wealth of a man, who departs for heaven leaving no male issue, let his eldest [that 'is, his most excellent‡] wife take; or, in her default, let 'the parents take it: on failure of them, it goes to the 'brothers.' The terms "if there be none [that is, if there be "no wife §]," which occur in the middle of the text, (§ 15) are connected both with the preceding sentence "it goes to "his brothers," and with the subsequent one "his father and "mother take it." For the text agrees [with passages of VISHN'U and YA'JNYAWALCYA,|| § 4 and 5, which declare the wife's right;¶] and the reasonableness of this has been already shown, (§ 43.)

Annotations.

Let her daily perform with devotion the worship of the gods.] 'And show 'hospitality to guests.' So the text is read in the *Víramitródaya*, viz., *dévatát'-tit'hi-pújanam*, instead of *dévatánán chapújanam*. Other variations in the reading of the text occur, but which are unimportant.

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* S'RÍCRISHN'A. † Ibid. ‡ *Víramitródaya.* § RAGHUNANDANA.
|| CHU'DA'MAN'I, ACHYUTA, and S'RÍCRISHN'A. ¶ MAHE'S'WARA.

46. A different opinion (§ 1ⁿ) is erroneous.

JITE'NDRIYA'S doctrine is right.

46 The assumption of any reference to the condition of the brethren as unseparated or as re-united,* not specified in the text, is inadmissible [being burdensome and unnecessary.†] Therefore the doctrine of JITE'NDRIYA, who affirms the right of the wife to inherit the whole property of her husband leaving no male issue, without attention to the circumstance of his being separated from his co-heirs, or united with them, (for no such distinction is specified), should be respected.

47. The wife must be a woman of the same tribe:

MENU declares her precedence.

47. The rank of wife belongs in the first place to a woman of the highest tribe: for the text [of S'ANC'HA, &c.‡] expresses, that "the "eldest wife takes the wealth" (§ 15 & 45;) and seniority is reckoned in the order of the tribes. Thus MENU says, "When regenerate men take wives both of their own "class and others, the precedence, honour, and habitation

Annotations.

47. *The rank of a wife belongs in the first place, &c.*] S'RÍCRÍSHN'A remarks, that CHU'DA'MAN'I expounds this whole paragraph differently from the sense in which he himself has explained it. According to CHU'DA'MAN'I, 'YA'JNYAWALCYA and VISHN'U (§ 4 & 5) ordain, that the estate of a childless 'man shall go to his widow. S'ANC'HA (§ 15) adds the condition, that she be 'the eldest wife. MENU (§ 47) restricts the rank of eldest wife to a woman of 'equal class: and states the purpose to be her personal attendance, &c. In 'the passage cited from VISHN'U, (§ 47) that is extended to a woman of the 'next following tribe. Therefore, to render all these passages consistent, since 'it appears that the eldest wife succeeds, and YA'JNYAWALCYA and the rest use 'the word wife for one competent to inherit, and it further appears from pas- 'sages to be hereafter cited, (§ 48), that brothers and the rest inherit the estate, 'giving only a maintenance to women who are not of that rank, it follows, that 'the rank of wife is restricted to the woman of equal class and to one of the next 'following tribe.' S'RÍCRÍSHN'A on the other hand admits, in concurrence with ACHYUTA, that, in a case of the utmost distress, a woman of the *Vais'ya* tribe, being married to a *Bráhman'a*, may be employed by him in religious offices. It should follow, that she may be capable of inheriting. This, however, is not expressly stated.

Though youngest in respect of the marriage.] Upon the death of the first wife, who is a *Bráhman'i*, and after a marriage with a *Cshátriya*, another *Bráhman'i*, who is subsequently espoused, is 'one youngest in respect of the date 'of marriage.' Else [if the *Cshatriya* were the first wife,] the marriages would be in the inverse order of the classes; which is forbidden. CHU'DA'MAN'I, ACHYUTA, and S'RÍCRÍSHN'A.

* Vide § 19. † S'RÍCRÍSHN'A.
‡ ACHYUTA, S'RÍCRÍSHN'A, and MAHE'S'WARA.

"of those wives must be settled according to the order of "their classes."* Therefore [since seniority is by tribe,†] a woman of equal class, though youngest in respect of the date of marriage, is deemed eldest. The rank of wife *(patní)* belongs to her, for she alone is competent to assist in the performance of sacrifices and other sacred rites. Accordingly MENU says, "To all such married men, the wives of "the same class only (not wives of a different class by any "means) must perform the duty of personal attendance, "and the daily business relating to acts of religion. For "he, who foolishly causes those duties to be performed by "any other than his wife of the same class, when she is "near at hand, has been immemorially considered as a "mere *Chán'd'ála* begotten on a *Bráh*"*man'i*."‡ But, on failure of a wife of the same tribe, one of the tribe immediately following [may be employed in such duties]. Thus VISHN'U ordains, "If there "be no wife belonging to the same tribe, "[he may execute the business relating to acts of religion] "with one of the tribe immediately following, in case of dis"tress. But a regenerate man must not do so with a woman "of the *S'údra* class."§ 'Execute business relating to acts of 'religion,' is understood from the preceding sentence.‖ Therefore, a *Bráhman'i* is lawful wife *(patní)* of a *Bráhman'a*. On failure of such, a *Cshátriya* may be so, in case of distress; but not a *Vais'ya*, nor a *S'údra*, though married to him. A *Cshátriya* woman is wife of a *Cshátriya* man. In her default, a *Vais'ya* woman may be so, as belonging to the next following tribe; but not a *S'údra* woman. A *Vais'ya* is the only wife for a *Vais'ya*: since a *S'údra* wife is denied

In her default, a woman of the next tribe.

Conformably with a passage of VISHN'U.

But not a woman of a lower class.

Annotations.

She alone is competent to the performance of sacred rites.] According to the remark of ACHYUTA and S'RÍCRĬSHN'A, this alludes to the grammatical rule for the derivation of *patní* wife, from *pati*, husband; as intending his female associate in the performance of religious ceremonies. Vide PA'N'INI. 4. 1. 35. *Mitácshara* on Inheritance, 2. 1. 5.

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* MENU, 9. 85. † S'RÍCRĬSHN'A. ‡ MENU, 9. 86.—87.
§ VISHN'U, 26. 3. ‖ Ibid. 26. 1.

in respect of the regenerate tribes simply.

48. A maintenance, declared by NA'REDA, regards women espoused, but not reckoned as wives.

48. In this manner must be understood the succession to property in the order in which the rank of wife is acknowledged. Therefore, since women actually espoused may not have the rank of wives, the following passage of NA'REDA intends such a case. "Among "brothers, if any one die without issue, or "enter a religious order, let the rest of the brethren divide "his wealth, except the wife's separate property. Let them "allow a maintenance to his women for life, provided these "preserve unsullied the bed of their lord. But, if they be-"have otherwise, the brethren may resume that allowance."* So [this other passage†] of the same author; ["On failure "of heirs, the property goes to the king,‡] except the wealth "of a *Bráhman'a*. But a king, who is attentive to the "obligations of duty, should give a maintenance to the "women of such persons. The law of inheritance has "been thus declared."§ The allotment of a maintenance to the women of such persons, not being of the rank of wives, and the declared right of wives to succeed to the whole estate, constitute no discrepancy.

There is no discrepancy.

49. Passages of VRÏHASPATI and NA'REDA reconciled on the same principle.

49. Accordingly, VRÏHASPATI propounds the king's right to an escheat in default of the wife: "If men of the military, commercial, and "servile tribes die childless, leaving neither "wife nor brother, let the king take the "property; for he is indeed lord of all." But NA'REDA, directing that "he should give a maintenance "to the women of such persons," (§ 48) authorizes the king to take the whole estate, giving to them enough for their support. This contradiction must be reconciled by distinguishing between the wife and the espoused woman.

Annotations.

48. *Not being of the rank of wives.*] Being of a tribe distant by one intermediate degree, or being of the *S'údra* class. CHU'DA'MAN'I and S'RÍCRÏSHN'A.

* NA'REDA, 13. 25.—26. † S'RÍCRÏSHN'A, &c. ‡ NA'REDA, 13. 51. § Ibid. 13. 52.

Accordingly, in passages declaratory of the wife's right of succession, the term "wife" *(patní)* is employed: and, in those which ordain a maintenance, the terms "woman" *(strí* or *nárí)* or "spouse" *(bháryá)* or other similar word.

50. Proper interpretation of the text of DE'VALA (§ 17).

50. In the text of DE'VALA, (§ 17) which expresses, "Next let brothers of the whole blood "divide the heritage of him, who leaves no "male issue; or daughters equal [as ap-"pertaining to the same tribe;] or let the "father, if he survive, or brothers belong-"ing to the same tribe, or the mother, or the wife, inherit "in their order; but, on failure of all these, the nearest "of the kinsmen succeed;" where "daughters equal" are such as appertain to the same class [with the deceased]; and "brothers belonging to the same tribe" intend those of the half blood; for whole brothers are specified under the appropriate term, and the distinction would be impertinent [as not excluding any one;* or as superfluous, since whole brothers, of course, belong to the same tribe;†] in this text, we say, the order, in which heirs are enumerated, from the whole brother to the wife, is not intended for the order of their succession; since it contradicts VISHN'U and the rest [as VRĬHASPATI and YA'JNYAWALCYA ‡]: but the meaning of the text is, that the heirs shall take the succession in the order declared by VISHN'U and others. To mark uncertainty in the specified order, the author has twice used the word 'or;' once in the phrase "or daughters," and again in the sentence "or let the father, &c.," and the word is also understood in other places. Thus DE'VALA has himself shown vagueness in his own enumeration, intimating that 'either brothers, or daughters, or parents, &c., [take the succession].'

51. BA'LO'CA's opinion refuted.

51. As for what has been said by BA'LO'CA, concerning the text of S'ANC'HA and the rest (§ 15), that it either relates to a wife inferior in class to her husband, or supposes the widow

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Annotations.

51. *It either relates to a wife inferior in class.*] According to this opinion, the passage is read with the interposition of the privative *a*: "The wife not eldest;" that is, inferior by tribe. (Vide § 15.) ACHYUTA and S'RÍCRĬSHN'A.

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* S'RÍCRĬSHN'A. † RAGH. on *Dáya-bhága*. ‡ MAHE'S'WARA.

to be young, or is relative to brethren unseparated or re-united; that author has manifested his own imbecility by thus proposing an indefinite interpretation of the law : for the doubt remains [which of the three is intended ;*] and neither rule could be followed in practice.

52. The allotment of a maintenance does not regard concubines.

52. As for the assertion, that the text, which ordains a maintenance, is relative to an unmarried woman and concubine, that must be rejected as intending a favor to the matrons ; for the scope of the precepts, which allot a maintenance to women, has been already shown.

53. Further argument against a different interpretation.

53. Moreover, under the distinction respecting the wife as belonging to the same or to a different tribe, how is the contradiction [of the text to passages of VISHN'U and YA'JNYAWALCYA† §4 and 5] regarding the succession of parents and brothers, to be reconciled [without transposition, or without connecting in construction remote terms ?‡] If it be by distinguishing the cases of re-union and

Annotations.

Or supposes the widow to be young.] Conformably with the text of HA'RI'TA, which directs, that property, sufficient only for the support of life, should be allotted to a young widow. ACHYUTA, S'RÍCRÍSHN'A, and MAHE'S'WARA.

Or is relative to brethren unseparated or re-united.] The reasoning, on which this grounded, has been before stated. (Vide § 19.) S'RÍCRÍSHN'A.

52. *As for the assertion.*] Of the same author, according to S'RÍCRÍSHN'A. But MAHE'S'WARA says, a certain author.

Intending a favor to the matrons.] This passage, which is obscure, has been explained by S'RÍCRÍSHN'A as ironical; the concubines being here tauntingly termed matrons: and MAHE'S'WARA quotes CHU'DA'MAN'I as authority for that interpretation. But the same commentators, in concurrence with ACHYUTA, state another explanation in which the wives are understood by matrons. It is only by favour of the wives, who themselves inherit the whole property, that a maintenance is allowed to the concubines.

53. *The proposed distinction founded on re-union, &c., has been refuted.*] MAHE'S'WARA understands this to be levelled against the doctrine of the *Mait'hila* school.

* S'RÍCRÍSHN'A. † MAHE'S'WARA. ‡ Ibid. Vide § 45.

continued separation, the same distinction may pervade the whole subject: and what occasion is there for assuming a difference relative to the wife, as belonging to the same or to another tribe? But the proposed distinction, founded on re-union and separation, [§ 19] has been already fully refuted by us [§ 30.]

54. A distinction of the whole and half blood does not reconcile the contradiction, being inconsistent with a passage of VRĬHASPATI.

54. The distinction regarding the whole and the half blood is contradicted by VRĬHASPATI, who says, "Let the wife of a deceased man, "who left no male issue, take his share, "notwithstanding kinsmen, a father, a "mother, or uterine brethren, be present."* Uterine brethren are brothers by the same mother [and, of course, of the whole blood.] The author declares the wife's right of succession, although such persons exist. By the term "his share," is understood the entire share appertaining to her husband; not a part of it only [sufficient for her support.†]

55. Conclusion in favor of the proposed construction.

55. Therefore the interpretation of the law is right as set forth by us.

56. The widow is restricted from gift, mortgage, and sale.

56. But the wife must only enjoy her husband's estate after his demise. She is not entitled to make a gift, mortgage, or sale of it. Thus CA'TYA'YANA says, "Let the childless "widow, preserving unsullied the bed of "her lord, and abiding with her venerable protector, enjoy "with moderation the property until her death. After "her let the heirs take it."

Annotations.

54. *The distinction regarding the whole and half blood.*] The opinion that the whole brother inherits before the wife, but the half brother after her. CHU'DA'MAN'I and ACHYUTA.

56. *Abiding with her venerable protector.*] This is according to the usual reading of the text, and conformable with the interpretation of it in the *Retnácara.* But, in the *Dáyatatwa,* it is read *vraté st'hitá* in place of *gurau st'hitá;* and the reading is expounded by the commentator CA'S'IRA'MA, 'diligent in such 'observances as may be beneficial to her husband in another world.' He rejects another interpretation, 'observant of fasts.'

Enjoy with moderation.] With abstemiousness, according to the commentators, S'RÍCRĬSHN'A and ACHYUTA. But, in the *Smrĭtichandrica,* it is explained

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* Vide Supra. § 1. † MAHE'S'WARA.

57. She shall enjoy the estate for life; and after her it goes to her husband's heirs.

57. Abiding with her venerable protector, that is, with her father-in-law or others of her husband's family, let her enjoy her husband's estate during her life; and not, as with her separate property, make a gift, mortgage, or sale of it at her pleasure. But, when she dies, the daughters or others, who would regularly be heirs in default of the wife, take the estate; not the kinsmen [or *sapin'd'as*:*] since these, being inferior to the daughter and the rest, ought not to exclude those heirs: for the widow debars them of the succession; and, the obstacle being equally removed if her right cease or never take effect, it can be no bar to their claim.

58. Not to her own heirs.

58. Nor shall the heirs of the woman's separate property [as her brothers, &c.†] take the succession [on failure of daughters and daughter's sons, to the exclusion of her husband's heirs;‡] for the right of those [persons, whose succession is declared under that head,§ C. 4] is relative to the property of a woman [other than that which is inherited by her.||] CA'TYA'YANA has propounded by separate texts the heirs of a woman's property; and [his text, declaratory of the succession to heritage,¶] would be tautology: [consequently heritage is not ranked with woman's peculiar property.**]

59. The heirs of her husband take the residue, after her use and consumption.

59. Therefore those persons, who are exhibited in a pasage above cited (§ 4) as the next heirs on failure of prior claimants, shall, in like manner as they would have succeeded if the widow's right had never taken effect, equally succeed to the residue of the estate remaining after her use of it, upon the demise of the widow in whom the succession had vested. At such time [when the widow

Annotations.

'patient of control.' There is considerable difference in the interpretation of the text, as to its general scope, according to various compilers, by whom it is cited.

* MAHE'S'WARA. † S'RÍCRISHN'A and ACHYUTA. ‡ Ibid. § MAHE'S'WARA. || Ibid. ¶ S'RÍCRISHN'A, &c. ** ACHYUTA, &c.

dies,* or when her right ceases,†] the succession of daughters and the rest is proper, since they confer greater benefits on the deceased [by the oblations presented by them‡] than other claimants [such as the *sapin'd'as* abovementioned.§ §37.]

60. A passage of the *Mahábhárata* confirms this.

60. Thus in the *Mahábhárata*, in the chapter entitled *Dánad'harma*, it is said, "For women, the "heritage of their husbands is pronounced "applicable to use. Let not women on any "account make waste of their husband's wealth."‖

61. Exposition of the passage.

61. Even use should not be by wearing delicate apparel and similar luxuries: but, since a widow benefits her husband by the preservation of her person, the use of property sufficient for that purpose is authorized. In like manner [since the benefit of the husband is to be consulted,¶] even a gift or other alienation is permitted for the completion of her husband's funeral rites. Accordingly the author says, "Let not women make waste." Here "waste" intends expenditure not useful to the owner of the property.

She may make a gift or sale for the obsequies of her husband.

62. For her maintenance, she may mortgage or sell, if necessary.

62. Hence, if she be unable to subsist otherwise, she is authorized to mortgage the property; or, if still unable, she may sell or otherwise alien it: for the same reason is equally applicable.

63. She should give suitable pre-

63. Let her give to the paternal uncles and other relatives of her husband, presents in proportion to the wealth, at her husband's

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Annotations.

60. *Thus in the Mahábhárata, &c.*] The author here corroborates what had been said concerning the restriction on the widow's power of gift, mortgage, and sale. (§ 56.) ACHYUTA, S'RÍCRÍSHN'A and MAHE'S'WARA.

The passage, here cited, is read differently in the text of the *Mahábhárata*; *pati-dáyádyam*, instead of *pati-dáyah*. But both readings may be interpreted in the same sense. One of the commentators on the poem notices another variation, *parivittáh*, instead of *pativittát* 'their husband's wealth.' Another commentator expounds the passage in a different manner: 'Let not sons 'resume any part of the wealth given to a woman by her husband.'

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* S'RÍCRÍSHN'A. † CHU'D'A'MAN'I. ‡ MAHE'S'WARA.
§ Ibid. ‖ *Mahábhárata, Dánad'harma*, 46. 24. ¶ S'RÍCRÍSHN'A.

sents to her husband's kindred at his obsequies.

funeral rites. VRĬHASPATI directs it, saying "With presents offered to his manes, and "by pious liberality, let her honour the "paternal uncles of her husband, his spiritual parents and "daughter's sons, the children of his sisters, his maternal "uncles, and also ancient and unprotected persons, guests, "and females of the family."* The term "paternal uncle" intends any *sapin'd'a* of her husband; "daughter's sons," the descendants of her husband's daughter; "children of his sister," the progeny of her husband's sister's son; "maternal uncles," her husband's mother's family. To these and to the rest, let her give presents, and not to the family of her own father, while such persons are forthcoming: for the specific mention of paternal uncles and the rest would be superfluous.

Not to her own kindred.

64. With their consent, however, she may bestow gifts on the kindred of her own father and mother. Thus NA'REDA says, "When the "husband is deceased, his kin are the "guardians of his childless widow. In the "disposal of the property, and care of her"self, as well as in her maintenance, they "have full power. But, if the husband's "family be extinct or contain no male, or be helpless, the "kin of her own father are the guardians of the widow, if "there be no relations of her husband within the degree of a *sapin'd'a.*"† In the disposal of property by gift or otherwise, she is subject to the control of her husband's family, after his decease, and in default of sons.

64. Unless with the sanction of her husband's relations.

NA'REDA declares them to be her guardians.

She is subject to their control.

65. In like manner, if the succession have devolved on a daughter, those persons, who would have been heirs of her father's property in her default, [as her son, her paternal

65. In like manner, the succession devolving on a

Annotations.

65. *In like manner, if the succession have devolved on a daughter, those persons, &c.*] If the next heirs succeed to the residue of the property, in the instance of the widow, whose right is preferable to the daughter's, much rather should the next heirs, who would regularly succeed if there were no daughter, take the succession after her. S'RÍCRÍSHN'A and CHU'DA'MAN'I.

* Vide Supra. § 2. † NA'REDA, 13. 28.—29.

daughter, passes, after her, to her father's heirs.

grandfather, &c.,*] take the succession on her death; not the heirs of the daughter's property [as her daughter's son, &c.†]

66. An unmarried daughter should have a share allotted by the widow for the expenses of her marriage.

66. The widow should give to an unmarried daughter a fourth part out of her husband's estate, to defray the expenses of the damsel's marriage. Since sons are required to give that allotment,‡ much more should the wife, or any other successor, give a like portion.

67. Conclusion.

67. Thus has the widow's right of succession been explained.

SECTION II.

On the right of the Daughter and Daughter's Son.

1. A daughter inherits if there be no widow; conformably with passages of MENU and NA'REDA:

1. THE daughter's right of succession on failure of the wife [is declared.§] On that subject MENU and NA'REDA say, "The son of a man is "even as himself; and the daughter is "equal to the son: how then can any other "inherit his property, notwithstanding the "survival of her, who is as it were himself?"|| NA'REDA particularizes the daughter [as inheriting in right of her continuing the line of succession:] "On "failure of male issue, the daughter "inherits, for she is equally a cause of "perpetuating the race; since both the "son and daughter are the means of "prolonging the father's line."¶ The author states the circumstance of her continuing the line as a reason of the daughter's succession: and the line of descend-

in right of oblations to be presented by her son.

Annotations.

Upon the same principle, the succession, devolving on the mother by the death of her son, passes after her decease to the heirs of her son; and not to her own heirs. See Sect. 2. § 31.

* ACHYUTA and S'RI'CRISHN'A. † Ibid. ‡ Vide C. 3 § 34. § S'RI'CRISHN'A.
|| MENU, 9. 130. Not found in NA'REDA's Institutes. ¶ NA'REDA, 13. 49.

ants here intends such descendants as present funeral oblations; for one, who is not an offerer of oblations, confers no benefits, and consequently differs in no respect from the offspring of a stranger or no offspring at all.

2. Her son only presents such oblations.

2. It is the daughter's son, who is the giver of a funeral oblation, not his son; nor the daughter's daughter: for the funeral oblation ceases with him.

3. Dícshita rightly prefers the daughter, who has or is likely to have male issue.

3. Therefore the doctrine should be respected, which Dícshita maintains, namely, that a daughter, who is mother of male issue, or who is likely to become so, is competent to inherit; not one, who is a widow, or is barren, or fails in bringing male issue as bearing none but daughters, or from some other cause.

4. The maiden daughter has the best claim, according to Pára'sa'ra.

4. Here again, the unmarried daughter is in the first place sole heiress of her father's property [to the exclusion of any daughter verbally betrothed.*] Accordingly Pára'sa'ra says, "Let a maiden daughter take the heritage "of one who dies leaving no male issue; "or, if there be no such daughter, a married one shall in-"herit." In the term "married" is here implied the restriction before mentioned [excluding one who fails in bringing male issue.†]

5. and De'vala.

5. Thus De'vala says, "To maidens should be given a "nuptial portion out of the father's estate. "But of him, who leaves no appointed "daughter, [nor son,] the unmarried daughter, belonging to "his own tribe, and legitimate, shall take the inheritance, "like a son." The term "appointed daughter" implies also son. "His own;" belonging to the same tribe with himself. "Legitimate;" his own lawful issue.

Annotations.

5. *Out of the father's estate.*] This is according to the reading, which is followed by this author, as well as by Raghunandana. But in other compilations, as the *Smrĭtichandrica*, *Retnácara* and *Víramitródaya*, the text is read *pitrĭ-dravyam*, instead of *pitrĭ-dravyát*: and the author of the last-mentioned work explains the passage as signifying, that 'a portion of the paternal estate [equal 'to the fourth part of a share] and nuptial presents should be given to a maiden 'daughter.'

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* Chu'da'man'i and S'rícrĭshn'a. † Chu'da'man'i and S'rícrĭshn'a.

6. This is proper: for, should the maiden arrive at puberty unmarried, through poverty, her father and the rest would fall to a region of punishment, as declared by holy writ. Thus VASISHT'HA says, "So many seasons "of menstruation as overtake a maiden "feeling the passion of love and sought in "marriage by persons of suitable rank, even so many are "the beings destroyed by both her father and her mother; "this is a maxim of the law."* So PAIT'HÍNASI: "A damsel should be given in mar- "riage, before her breasts swell. But, if she have men- "struated [before marriage,] both the giver and the taker fall "to the abyss of hell; and her father, grandfather, and great "grandfather, are born [insects] in ordure. Therefore she "should be given in marriage while she is yet a girl."

6. Her marriage is requisite to the welfare of the manes of her ancestor; as shown by VASISHT'HA and PAIT'HÍNASI.

7. Since then the father and the rest are saved from hell by sufficient property becoming applicable to the charges of her marriage; and, being accordingly married, she confers benefits on her father by means of her son; the wealth devolving on her is for the benefit of the [former] owner;† and it is reasonable, therefore, that the property should descend to the unmarried daughter, on failure of the wife.

7. And the appropriation of the wealth to that purpose is for her father's benefit.

8. But, if there be no maiden daughter, the succession devolves on her who has, and on her who is likely to have, male issue. That is declared by VRIHASPATI: "Being of equal "class and married to a man of like tribe, "and being virtuous and devoted to obe- "dience, she [namely, the daughter,‡] whe- "ther appointed or not appointed to continue the male line, "shall take the property of her father who leaves no son "[nor wife.§]"

8. Next a daughter who has or is likely to have male issue, succeeds: as intimated by VRIHASPATI.

9. Of equal class.] Belonging to the same tribe with her father. Married to a man of like tribe.] This is intended to exclude one married to a man of a superior or inferior tribe. For

9. Interpretation of the text.

Annotations.

9. *To exclude one married to a man of a superior or inferior tribe, &c.*] This

* VASISHT'HA, 17. 56.
† Vide Sect. 1. § 44.
‡ Vide § 13.
§ S'RICRISHN'A and CHU'DA'MAN'I.

the offspring of a daughter married to a man of a higher or lower class is forbidden to perform the obsequies of his maternal grandfather and other ancestors who are of inferior or of superior rank. But one, married to a man belonging to the same class, confers benefits on her father by means of her son.

10. A daughter appointed to continue the male line has a preferable title.

10. The son of a daughter appointed to continue the male line is, like a son, highly beneficial to his ancestor; and, through him, the appointed daughter is equal to a son: wherefore the appointed daughter and legitimate son have an equal right of succession.* But a married daughter, who was not so appointed, confers less benefit on her father than the son and the rest [viz., the son's son and grandson's son,† and the widow;‡] and is of benefit by means only of her son: it is proper, therefore, that she should succeed only on failure of other heirs down to the unmarried daughter.

11. An argument for preferring one who has male issue to the maiden daughter, refuted.

11. It must not be alleged, that, admitting this doctrine [of benefits conferred being the cause of a right of succession,§] the daughter, who has male issue, should alone inherit in the first instance; but, on failure of such, then a daughter who may have issue. For her

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Annotations.

remark of JÍMU'TA-VA'HANA is inadmissible: for the term 'married' excludes the notion of union with a man of inferior tribe; since there can be no marriage between a woman of higher tribe and a man of a lower one. Therefore the intention is to exclude one married to a man of superior class. *Víramitródaya.*

Who are of inferior or of superior rank.] A daughter's son of a superior tribe is forbidden to offer a funeral repast to the manes of his maternal grandfather who is of a lower tribe; and a daughter's son, being of inferior rank, is forbidden to offer it for his maternal grandfather who is of a higher class. RAGH. on *Dáya-bhága.*

11. *For her son might be excluded from the succession.*] Accordingly the notion, that, in the case of two daughters having male issue, one a widow, the other having a husband living, the widow should inherit in the first instance, because she first offers funeral oblations through her son [whose father is already dead], is refuted. ACHYUTA and S'RÍCRISHN'A.

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* Vide C. 10. † S'RÍCRISHN'A. ‡ CHU'DA'MAN'I § ACHYUTA and S'RÍCRISHN'A.

son, born subsequently, might in this manner be excluded from the succession. Nor is this proper; for both equally confer benefits on their grandfather, as daughter's sons.

12. A widow is excluded by implication (§ 8.)

12. By specifying "obedience" to her husband (§ 8), the author indicates, that she is not in the state of widowhood, and that consequently she may have issue.

13. Further exposition of the text, (§ 8.)

13. In the text before cited (§ 8), the pronoun refers to the word "daughter" contained in a preceding passage [which will be forthwith quoted.* § 14.] Thus, by the conditions specified, that she be "of equal class" and "married to a man of like tribe," &c. (§ 8), the author shows, that she does not inherit her father's wealth merely in right of her relation as daughter. Else, since the daughter's right of succession is declared by the following passage, the mention of it by the same author in the foregoing text would be a vain repetition. But a special rule, regarding what was suggested generally, is not tautology.

A daughter does not inherit of course, in right of her relation as such.

14. A passage of VRĬHASPATI compares the daughter to the son.

14. "As a son, so does the daughter "of a man proceed from his several limbs. "How then should any other person take "her father's wealth?"†

15. If an appointed daughter bear no issue, the property does not go to her husband:

15. Since a daughter's right of succession to the property of her father is founded on her offering funeral oblations by means of her son; therefore, even in the case of an appointed daughter, on whom the estate has devolved by the

Annotations.

14. *Proceed from his several limbs.*] This is an allusion to a passage of the *Véda*, which is quoted by BAUD'HA'YANA. It is addressed by a father to his son. "From my several limbs thou art distilled; from my heart thou art "produced: thou art indeed self, but denominated son: may thou live a hun- "dred years."

15. *By her unmarried sister or by another.*] The text is read and interpreted differently in the *Retnácara*: 'If she leave no son, it shall be taken by 'her daughter or by her sister.' This is according to the reading of the text, as it is cited in the *Calpataru*, '*aputráyán cumáryá swasrá vátad gráhyam*,' instead of '*aputráyán cumáryává swasrá tad grahyan tad anyayá.*

* CHU'DA'MAN'I, S'RÍCRĬSHN'A, &c. † VRĬHASPATI.

demise of her father, should she bear no male issue in consequence of her proving barren, or because her husband is incapable of procreation, the property does not go upon her death to her husband. Thus S'ANC'HA and LIC'HITA say, "The husband is not entitled "to the wealth of his wife, being an appointed daughter, if she die leaving no "issue." So PAIT'HÍNASI: "On the death of an appointed "daughter, her husband does not inherit her property: if "she leave no issue, it shall be taken by her unmarried "sister or by another." Hence her property is to be taken by her maiden sister, or by another sister likely to have issue. Therefore, when the succession has devolved on a female, [her husband's*] claim [as her heir] is precluded.

according to S'ANC'HA and LIC'HITA; and PAIT'HÍNASI.

16. But the following passage of MENU must be understood to be applicable, on the demise of an appointed daughter, who has not been destitute of male issue, having borne a son who has died. "Should a daughter, appointed to continue the male line, die by any accident without a "son, the husband of that daughter may without hesitation "possess himself of her property."†

16. A contradictory passage of MENU supposes her to have borne issue.

17. VRĬHASPATI recites the gift of the funeral oblation as the sole cause [of right] in the instance of both [the daughter and the grandson.] "As the ownership of her father's wealth "devolves on her, although kindred exist; "so her son likewise is acknowledged to be heir to his "maternal grandfather's estate." As the daughter is heiress of her father's wealth in right of the funeral oblation which is to be presented by the daughter's son; so is the daughter's son owner of his maternal grandfather's estate in right of offering that oblation, notwithstanding the existence of kindred, such as the father and others.

17. A daughter's son is the next heir; as declared by VRĬHASPATI.

Annotations.

16. *Having borne a son who has died.*] JÍMU'TA-VA'HANA'S text exhibits the conjunctive particle *cha:* and, according to this reading, the sense should be 'who is not destitute of male issue and who has borne a son who has died.' But ACHYUTA and S'RÍCRĬSHN'A censure it as an erroneous reading.

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* CHU'DA'MAN'I, ACHYUTA, and S'RÍCRĬSHN'A.

† MENU, 9. 135.

18. Nor does this text (§ 17) relate to the son of an appointed daughter: for the pronoun "her," in both the phrases ("devolves on her," and "her son is acknowledged,") bears reference to the "daughter whether appointed or not appointed," who was mentioned in the preceding passage (§ 8.) Or, upon the principle of selecting the nearest term, the reference may properly be to the "daughter not appointed." But this term cannot be rejected to select the other.

18. The text does not concern the offspring of an appointed daughter.

19. Accordingly MENU propounds the daughter's origin from the person of the maternal grandfather as the reason of the daughter's son having a right to the succession; not her appointment to raise a son: else he would have specified this cause. "Let the daughter's son "take the whole estate of his own father who leaves no "[other] son; and let him offer two funeral oblations; one "to his own father, the other to his maternal grandfather. "Between a son's son and the son of a daughter, there is "no difference in law; since their father and mother both "sprung from the body of the same man."*

19. MENU states relation as the reason of the daughter's son inheriting.

20. Thus this very author expressly declares, that the daughter's son, born of one not appointed to continue the male line, has the right of succession. "By that male child, whom "a daughter, whether formally appointed "or not, shall produce from a husband of an equal class; "the maternal grandfather becomes in law the father of a "son: let that son give the funeral oblation and possess "the inheritance."†

20. He expressly declares his right of succession.

21. Besides the term 'daughter's son' is in law restricted to signify the

21. Daughter's son intends son of

Annotations.

19. *There is no difference.*] By thus likening the grandson in the female line to the grandson in the male line, it is intimated, that, as, on failure of the son, the son's son is heir, so, in default of the daughter, the daughter's son is the successor. RAGH. *Dáyatatwa.*

Consider as another son.] In the *Calpataru*, the text is read *asyám* "her," instead of *anyam* "another." That reading varies the construction rather than the purport of the text.

* MENU, 9. 132.—133. † MENU, 9. 136.

an appointed daughter: as is intimated by BAUD'HA'YANA.

male offspring of an appointed daughter. BAUD'HA'YANA intimates that, when he says, " [Consider as] another [son] the daughter's son termed son of an appointed " daughter, being born of the female issue after an express " stipulation." Here 'consider' is understood.

22. BHÓJADE'VA cites the text (§ 17) as of general import.

22. Hence also [since such is the scope and purport of the text ;* § 17] BHÓJADE'VA has cited that passage of VRĬHASPATI under the head of succession of a daughter appointed or unappointed.

23. GÓVINDA-RA'JA prefers the daughter's son to the married daughter: conformably with a passage of VISHN'U.

23. But GÓVINDA-RA'JA, in his commentary on MENU, states the claim of the daughter's son as preferable to that of the married daughter, on the grounds of the following passage of VISHN'U. " If one die leaving neither son " nor grandson, the daughter's son shall " inherit the estate ; for, by consent of all, " the son's son and the daughter's son are " alike in respect of the celebration of obsequies."†

24. This is unsatisfactory.

24. This does not appear to us satisfactory : for it contradicts the text above cited (§ 8.)

25. A daughter's son inherits after the married daughter;

25. But, in default of a married daughter such as above described, the succession assuredly devolves on the daughter's son, notwithstanding the existence of the father and other kinsmen. For it appears from the comparison of his condition to her's, (§ 17) and more expressly from the purport of the term " likewise" in the phrase " her son likewise is acknowledged to be

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21. *After an express stipulation.*] After the accepting of her as an appointed daughter. (Vide § 15.—17.) CHU'DA'MAN'I and S'RÍCRĬSHN'A.

25. *A married daughter such as above described.*] Who does not fail of bearing issue. CHU'DA'MAN'I, ACHYUTA, and S'RÍCRĬSHN'A.

Who has or is likely to have male issue. RAGH. on *Dáya-bhága.*

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* S'RÍCRĬSHN'A.

† Not found in VISHN'U's Institutes. It is cited by RAGHUNANDANA in the *Dáya-tatwa*, as on the authority of GÓVINDA-RA'JA's quotations.

"heir," (§ 17), that his pretensions are inferior to her's. Therefore it is a right deduction, that the succession of the daughter's son is next after the daughter.

26. And before the father and mother.

26. By the words "although kindred exist," (§ 17) the succession of both parents, which reasonably should take effect on failure of the wife, but which is barred by the daughter and daughter's son, is hinted as taking place when no such impediment exists. Accordingly VRĬHASPATI, immediately after [the passage above cited,* § 17] says "On failure of those persons, the brothers and nephews of "the whole blood are entitled to the estate, or kinsmen, or "cognates, or pupils, or venerable priests." Here the word "those" bears reference to the daughter's son [named in the text,] and to the parents indicated [by the term kindred.†] Therefore, it is on failure of these persons, that the succession of brothers and the rest takes place.

27. BA'LO'CA postpones the claim of the daughter's son; erroneously.

27. As for the assertion of BA'LO'CA, that the daughter's son inherits after the whole series of heirs specified in the passage of [YA'JNYAWALCYA] above cited, "The wife, daughters "also," &c., (sect. 1. § 4) that is mere childish prattle; for it contradicts the text of VRĬHASPATI (§ 17.) Nor is there any thing inconsistent with that enumeration of heirs; for the maiden daughter, married daughter, and daughter's son, are all signified by the term "daughters" in the plural number (sect. 1. § 4.) As the word "son," in the phrase "who departed for heaven "leaving no son," intends male issue down to the great grandson, since he is equally a giver of funeral oblations; so does the term "daughter" comprehend the daughter's

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26. *Bears reference ...... to the parents.*] Else, if the brothers inherit next after the daughter's son, that would contradict YA'JNYAWALCYA and the rest, as above cited. (Vide Sect. 1. § 4.) CHU'DA'MAN'I and S'RÍCRISHN'A.

27. *As for the assertion, that the daughter's son inherits after the whole series of heirs. &c.*] This doctrine is maintained by the *Maithila* school, as is remarked by S'RÍCRISHN'A in the *Crama-Sangraha*.

* S'RÍCRISHN'A.

† R[illegible] on D[illegible]a-*bhága*.

son, for he also is the giver of a funeral offering; or as the term "male issue," in the sentence "on failure of male issue, "the daughter inherits" (§ 1), intends the widow also. Else the plural number, in the word "daughters," would be unmeaning: and the author would have used the singular number, as in the words "the wife," "the son of a brother," &c. We shall hereafter [in the course of expounding passages concerning the re-union of parceners*] explain the intention of the plural number in the word "brothers," (sect. 1. § 4.)

28. He would not inherit in any case.

28. Moreover, since a series of heirs is specified from both parents to the king, it would follow, that the succession of the daughter's son takes effect on failure of the king. But there never is a vacancy of the throne; and consequently the succession could never take place.

29. The other doctrine should be admitted.

29. Therefore the succession of the daughter's son on failure of daughters, as affirmed by VIS'WARU'PA, JITE'NDRIYA, BHÓJADE'VA, and GÓVINDA-RA'JA, should be respected.

30. If the daughter die without issue, her father's next heirs succeed.

30. But, if a maiden daughter, in whom the succession has vested, and who has been afterwards married, die [without bearing issue,†] the estate, which was her's, becomes the property of those persons, a married daughter or others, who would regularly succeed if there were no such [unmarried daughter] in whom the inheritance vested, and in like manner succeed on her demise after it has so vested in her. It does not become the property of her husband or other heirs: for that [text, which is declaratory of the right of the husband and the rest,‡] is relative to a woman's peculiar property. Since it has been shown by a text before cited (sect. 1. § 56), that, on the decease of the widow in whom the succession had vested, the legal heirs of the former owner, who would regularly inherit his property if there were no widow in whom the succession vested, namely, the daughters and the rest, succeed to the wealth; therefore the same rule [concerning the succession of the former possessor's next heirs§] is inferred

* ACHYUTA and S'RÍCRĬSHN'A. Vide Infra. Sect. 5. § 37.
† S'RÍCRĬSHN'A. ‡ Ibid. § Ibid.

á fortiori, in the case of the daughter and grandson whose pretensions are inferior to the wife's.

31. The rule is general in the case of a woman's succession.

31. Or the word "wife" [in the text above quoted,* sect. 1. § 56] is employed with a general import: and it implies, that the rule must be understood as applicable generally to the case of a woman's succession by inheritance.

32. Conclusion.

32. Thus has the succession of the daughter and daughter's son been explained.

SECTION III.

On the Father's right of Succession.

1. The father is next heir after the daughter's son.

1. If there be no daughter's son, the succession devolves on the father; and not on the mother [before the father]; nor at once on both parents. For that is contrary to VISHN'U's text, "If there be none, it belongs to the father; if he be "dead, it appertains to the mother."†

2. Passages of MENU and VRĬHASPATI, which declare the mother's succession, suppose the demise of the father.

2. But the following passage of MENU, as well as that of VRĬHASPATI, must be understood as relating to a case of failure of heirs down to the father inclusively. "Of a son dying child-"less [and leaving no widow‡] the mother "shall take the estate; and, the mother "also being dead, the father's mother shall "take the heritage."§ "Of a deceased son, "who leaves neither wife nor male issue, the mother must "be considered as heiress: or, by her consent, the brother "may inherit."||

3. The preferable right of the

3. This is a result too of reasoning. The father's right of succession should be after the daughter's son and before the mother: for

* S'RÍCRÍSHN'A.
† Vide Supra. Sect. 1. § 5.
‡ ACHYUTA and S'RÍCRÍSHN'A.
§ MENU, 9. 217.
|| VRĬHASPATI.

father is a result of reasoning:

the father, offering two oblations of food to other manes, in which the deceased participates, is inferior to the daughter's son who presents one oblation to the deceased, and two to other manes in which the deceased participates: he is preferable to the mother and the rest because he presents [personally*] to others two oblations in which the deceased participates; and his superiority is indicated in a passage of MENU: "In a comparison of the male with the female sex, the male is pronounced superior."†

4. And is indicated by the text which expresses "parents."

4. In the term *pitarau* "both parents" (sect. 1. § 4), the priority of the father is indicated: for the father is first suggested by the radical term *pitri*; and afterwards the mother is inferred from the dual number, by assuming, that one term [of two which composed the phrase] is retained.

5. An objection obviated.

5. Hence [since the members of the series are presented to the understanding in the order here stated‡], the argument, that, 'the mental apprehension of a series being co-extensive with the oral recital of its component members, recital, being wanting, necessarily precludes apprehension,' must be rejected as inconclusive; for it is not true, that an adequate indication is wanting [being deducible in the manner above stated; § 4] and [the joint succession of father and mother] would contradict the text of VISHN'U.

6. Conclusion.

6. Thus the father's right of succession has been explained.

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4. *By assuming that one term is retained.*] This is an allusion to the etymology of *pitarau* 'parents' from *pitrí* 'father,' representing the compound term *mátá-pitarau* 'mother and father.' PANÍNI. 1. 2. 70.

* CHU'DA'MAN'I. † MENU, 9. 35. ‡ S'RÍCRÍSHN'A.

SECTION IV.

On the Mother's right of Succession.

1. The mother inherits after the father.

1. If the father be not living, the succession devolves on the mother: for, immediately after propounding the father's right to the estate, Vishn'u's text declares, "If he be dead, it "appertains to the mother."*

2. Her right is founded on reason.

2. This too is reasonable: for her claim properly precedes that of the brothers and the rest; since it is necessary to make a grateful return to her, for benefits which she has personally conferred by bearing the child in her womb and nurturing him during his infancy; and also because she confers benefits on him by the birth of other sons who may offer funeral oblations in which he will participate.

3. The doctrine of her preferable right is erroneous.

3. The notion, therefore, that the mother's right should precede the father's, because she is pronounced to surpass him in the degree of veneration due to her, must be rejected. For, if a superior title to veneration were the reason of a right of inheritance, the succession would devolve on the

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3. *The notion that the mother's right should precede the father's, is rejected.*] This appears to be levelled against the doctrine maintained by the *Mait'hila* school, or, at least, by Va'chespati Mis'ra and by the author of the *Viváda-chandra*. S'ríсrishn'a, in the *Crama-sangraha*, cites Mis'ra (meaning Va'chespati Mis'ra) as affirming that doctrine on the strength of an inverted and erroneous reading of Vishn'u's text. (Sect. 1. § 5.)

Because she is pronounced to surpass him.] By the following or similar passages: "A mother surpasses a thousand fathers."† S'ríсrishn'a.

* Vide Supra. Sect. 1. § 5.

† Menu, 2. 145.

spiritual preceptor before the father; since it is said "Of "him who is the natural parent, and him who gives holy "knowledge, the giver of the sacred science is the more "venerable father:"* and paternal uncles and the rest would inherit in preference to a younger brother or a nephew. Therefore the mother's right of succession is after the father [and before the brothers.†]

4. By the same analogy, the grandmother inherits after the grandfather:

4. By thus declaring, that the mother's succession takes place after the father of the deceased, and before the father's offspring, the author intimates, that the paternal grandmother's succession likewise takes place after the grandfather and before the grandfather's offspring. For otherwise [if a different order of succession be assumed;‡ or if that order be not established;§ or that ndication be not acknowledged;||] there is a contradiction between the specified order of succession, "both parents, brothers likewise, &c.,"¶ [and this case which is perfectly analogous.**] Accordingly [since the grandmother's right of succession is in this manner indicated by YA'JNYAWALCYA;††] MENU says, "And the mother also being dead, the "father's mother shall take the heritage."‡‡ The meaning is 'being dead, that is, deceased, together with her offspring.'

5. And after brothers and nephews.

5. Here the particle "and," as well as "also," must be joined in construction with both parts of the sentence. Therefore the sense is 'and the 'mother being dead, the paternal grand- 'mother also may take the heritage.' What then becomes of the brothers and the rest? These persons, including the paternal grandfather, are indicated by the particle "also."

6. As the mother inherits after the father and before the offspring,

6. The meaning then of the text [of YA'JNYAWALCYA§§] is this: the succession of both parents takes effect, in the order which has been explained, after the descendants of the deceased down to his daughter's son, and before [the

Annotations.

5. *Are indicated.*] Copies of S'RÍCRÌSHN'A exhibit a different reading; *samuchchitáh* 'assembled' instead of *suchitáh* 'hinted.' The variation does not make a material alteration in the sense.

* MENU, 2. 146. † S'RÍCRÌSHN'A. ‡ Ibid. § CHU'DA'MAN'I.
|| ACHYUTA. ¶ Vide Supra. Sect. 1. § 4. ** CHU'DA'MAN'I and S'RÍCRÌSHN'A.
†† [illegible] on *Dáya-bhága*. ‡‡ [illegible] Sect. 3, § 2. §§ CHU'DA'MAN'I.

so the grandmother inherits after the grandfather and before their progeny.

father's*] own offspring. Hence the succession of the paternal grandfather and grandmother is thus shown to take place before their own offspring. Accordingly it is not separately propounded in the text of YA'JNYAWALCYA; since the right of the paternal grandfather and grandmother is virtually declared by showing the mother's right of succession.

7. Conclusion.

7. Thus the mother's right of inheritance has been explained.

SECTION V.

On the Brother's right of Succession.

1. After the mother, the brothers inherit.

1. IF the mother be dead, the property devolves on the brother: for VISHN'U, having declared, that, "If the father be dead, it appertains to the "mother," proceeds to say, "On failure of "her, it goes to the brothers:"† and here the pronoun refers to the mother. It appears also from the passage [of YA'JNYAWALCYA] "both parents, brothers likewise,"‡ that the brother's succession takes place in the case of the death of both parents.

2. Not the brother's son jointly with them.

2. It must not be alleged, that, under the passage above cited, which expresses "brothers like-"wise and their sons," the brother's son, being declared heir in like manner as the brothers are, shall inherit also next to the

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Annotations.

7. *The mother's right of inheritance has been explained.*] On the death of the mother, the residue of the estate devolves on the brother as next heir in the order of succession, and not, like a woman's peculiar property, on her son and daughter: for it is a case of an estate devolving on a woman. (Vide Sect. 2. § 31.) CHU'DA'MAN'I.

* RAGH. on *Dáya-bhága*. † Vide Supra. Sect. 1 § 5. ‡ Sect. 1. § 4.

mother. For the text of VISHN'U, declaring that "it goes "to the brothers," adds "After them, it descends to the "brother's sons:" and in this place the pronoun refers to the brothers.

3. It is reasonable; for the brother confers more benefits on the deceased.

3. That too is reasonable: for the brother confers benefits on the deceased owner by offering three funeral oblations to his father and other ancestors, in which the deceased participates; and he occupies his place, as presenting three oblations to the maternal grandfather and the rest, which the deceased was bound to offer; and he is therefore superior to the brother's son, who has not the same qualifications. But deriving his origin from the mother, the brother, though he do possess these qualifications, is inferior to the mother; and his succession, therefore, very properly takes effect after her.

4. As well might parents and brothers inherit together.

4. Besides why may not the word "likewise" be connected with the term "brother?" and thus the parents and brothers may have an equal right of succession; the text being interpreted 'as parents, so do brothers inherit.'

5. It is contradicted by VISHN'U, and by MENU.

5. The question, then, must be negatived, as at variance with the text of VISHN'U: and the same is to be done in the other instance likewise [of the claims of brother and brother's son.*] So MENU declares, that brothers take the inheritance, not the nephew. "Of "him, who leaves no son, the father shall take the inherit- "ance; or the brothers."†

6. The nephew whose father is living, is excluded: how should one, whose father is dead, be admitted?

6. Moreover, why has not the nephew, whose father is living, a right of succession? There is no other reason but this: that one, whose father is living, does not confer benefits, since he is incompetent to offer oblations. If then it be thus settled, [that the order of succession is regulated by the degree in which benefits are conferred,‡] how should a nephew, whose father is deceased, inherit equally with the brother, since he does not confer equal benefits? Accordingly DE'VALA, in a passage before cited [Sect. 1. § 17], not spe-

* ACHYUTA and S'RÍCRĬSHN'A. † MENU, 9. 185. ‡ S'RÍCRĬSHN'A.

cifying the brother's son in the series of heirs down to the half brother, comprehending the widow, daughter equal by class, father, mother, brother of the whole blood, and brother of the half blood, intimates that the succession of nephews and the rest takes place on failure of heirs down to the half brother.

7. A nephew is pronounced to be as a son, with a different view.

7. The passage, which pronounces a nephew to be as a son, [" They are all fathers by means of " that son ;"*] is intended to authorize his presenting a funeral oblation and to establish his right of succession on failure of brothers. [They do not inherit together ;†] for that contradicts the text [of VISHN'U‡] above cited. Else why should not [his right of succession§] be before the brothers.

8. The brother therefore is sole heir.

8. Therefore the brother alone is heir in the first instance.

9. First the brother of the whole blood inherits:

9. Here again, a brother of the whole blood has the first title ; under the following text [§10] : and, even under the general rule for the brother's succession (" brothers also" Sect. 1. § 4). The meaning is, that the whole brother shall inherit in the first place : but, if there be none, then the half brother ; for he also is signified by the word brother, being issue of the same father.

10. Conformably with a passage of YA'JNYAWALCYA.

10. The passage alluded to (§ 9) is as follows : " A " re-united [brother] shall keep the share " of his re-united [co-heir,] who is deceased ; " or shall deliver it to [a son subsequently] " born. But an uterine brother [shall thus retain or deliver " the allotment] of his uterine relation."|| This text of YA'JNYAWALCYA also shews, that the term brother is applicable both to the whole and to the half blood. Else, if it intended only the uterine [and, of course, whole] brother, the author would not have specified, that " the uterine " brother should retain or deliver the allotment of his uterine " relation :" for the whole blood would be signified by the single term " brother."

11. Proof of the inference.

11. Therefore the succession of brothers, whether of the whole or of the half blood, is declared by the passage before

* MENU, 9. 182. † ACHYUTA. ‡ CHU'DA'MAN'I and S'RÍCRÍSHN'A.
§ S'RÍCRÍSHN'A. || YA'JNYAWALCYA, 2, 139.

cited ("Both parents, brothers likewise." Sect. 1. § 4). But, by here specifying the uterine relation, the prior right of the uterine (or whole) brother is intimated.

12. The half brother is rightly placed between the whole brother and nephew by S'RÍCARA and VIS'WARU'PA.

12. The succession of the half brother, between [the whole brother and the brother's son,*] as affirmed by S'RÍCARA and VIS'WARU'PA, should be acknowledged; for he is inferior to the whole brother, who presents oblations to six ancestors which the deceased was bound to offer, and also presents three oblations to the father and others, in which the deceased participates; while the half brother only presents three oblations in which the deceased participates: and he is superior to the nephew, because he surpasses him in the conferring of benefits, since he offers three oblations of which the deceased participates.

13. A further passage of YA'JNYAWALCYA.

13. In answer to the inquiry whether the half brother, though re-united in co-parcenery, be inferior or not to the whole brother, YA'JNYAWALCYA says, "A half brother, being again associated, may take the succession; not a "half brother, though not re-united: but one united [by "blood, though not by co-parcenery,] may obtain the "property; and not [exclusively] the son of a different "mother."†

14. Exposition of it.

14. The meaning of the text is this: 'A brother by 'a different mother, but associated again 'in co-parcenery, shall first take the in-

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Annotations.

13. *A half brother, being again associated, &c.*] This obscure text, darker even than the preceding one (§ 10), admits of different interpretations, independently of variations in the reading, which also are numerous. It is necessary therefore for the understanding of the commentary, to exhibit a second version of the text, conformably with the interpretation of S'U'LAPA'N'I: "A half brother, "being again associated, may not take the succession of his half brother: [the "whole blood,] though not re-united, shall obtain the property; not, though "united, the son of a different mother." RAGHUNANDANA, in the *Dáyatatwa*, remarks, that the *Mitácshara* and *Retnácara* concur in the same interpretation with JÍMU'TA-VA'HANA; from which he also does not substantially differ.

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* S'RÍCRISHN'A. † YA'JNYAWALCYA, 2. 140.

'heritance; not generally any half brother [whether asso- 'ciated or separated.'*] The latter part of the text is in answer to the question, whether, inheriting first, he excludes the whole brother or takes the succession jointly with him? 'the whole brother, though not re-united in parcenery, shall 'take the heritage;' (here the word whole brother is understood from the preceding sentence:) 'not exclusively the 'son of a different mother, though re-united.' Or the term "united" may signify whole brother [or united by blood.] Accordingly the text is so read in the citation of it by JITE'NDRIYA as a passage of *Vridd'ha* YA'JNYAWALCYA: and, in that case, the term "associated" is understood from the preceding sentence.

15. An associated half brother inherits with the unassociated whole brother.

15. Therefore the half brother, who is again associated in co-parcenery, shall not take the succession exclusively; but the whole brother [shares it] though not associated. Such is the meaning: and consequently the whole brother, who is not re-united in parcenery, and the half brother, who is associated, should divide the succession. Accordingly the author has employed the particle "but" [with the connective sense.†]

16. An objection proposed by S'RÍCARA MIS'RA.

16. An objection is stated by S'RÍCARA MIS'RA. The maxim, that "the re-united brother shall "keep the share of his re-united co-heir," (§ 11) is independent [of other precepts,‡] as it applies to the case of re-united half brothers exclusively; and, in like manner, the maxim that "the uterine [meaning the whole] brother retains the allot-

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Annotations.

14. *The text is so read.*] The reading here exhibited is *sódaró nányamatrĭjah* instead of *sansrĭshtó nányamátrĭjah*. The second verse of the stanza is read in the *Calpataru* 'may not take the wealth of the half brother,' *nányódarya-d'hanam harét*, in place of *nányódaryó d'hanam harét*, 'a half brother may not 'take the wealth.' This reading is condemned by the author of the *Retnácara* as unauthorized; and RAGHUNANDANA, in the *Dáyatatwa*, quotes the censure, and apparently concurs in it.

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* S'RÍCRISHN'A. † Ibid. ‡ Ibid.

" ment of his uterine relation," (§ 10) bears no reference [to any other rule,] when it is applicable to the case of unassociated whole brothers only: but, when there is a half brother associated and a whole brother unassociated, if the two maxims be applied to this case in consequence of finding both descriptions of brethren, then both maxims take effect with reference to each other. Now it is not right to make the same rule operative with and without reference to another maxim; for this argues variableness in the precept.

founded on reasoning of the *Mímánsá*.

Thus it is shown [by JAIMINI,] in the disquisition on the passage *dwayóh pran'ayanti*,* that the prohibition, relatively to two sacrifices, of the use of the *uttara-védi* or northern altar directed generally for the four sacrifices [in which those two are comprehended], is not a prohibition [but an exception]; for, if the precept concerning the northern altar be taken with reference to the [denial, implying consequently] an option, in the instance of two sacrifices, and be taken absolutely and without reference to any other maxim in the instance of the two other sacrifices, there would be variableness in the precept. So, in regard to the subject under consideration, the maxims, that " the re-united brother shall " keep the shares of his re-united co-heir," and that " the " uterine [or whole] brother shall retain the allotment of " his uterine relation," (§ 10) are applicable in those cases in which the rules are operative independently of any other: but, if there be a half brother associated and a whole brother unassociated, the two rules are not applicable in this

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Annotations.

16. *In the disquisition on the passage* dwayóh pran'ayanti.] This is the ninth (or, according to one reckoning, the seventh) *adhicaran'a* or topic in the third section of JAIMINI's seventh chapter. It is a disquisition on the interpretation of a passage of the *Véda*, which directs that a northern altar be prepared for the *Cháturmásya* sacrifice, and forbids it at two of the four sacrifices comprehended under that designation, namely, at the *Vais'wadéva* and *S'unásíríya*: whence it is concluded, that, this being an exception to the more general rule, the altar is directed to be employed under that general rule, in the remaining two sacrifices only, viz., at the *Várun'a-praghása* and *Sácaméd'ha*. The reasoning, introduced into this disquisition, is the ground-work of S'RÍCARA's objection. See *Mitácshara*, 2. 1. 34.

instance; and it would follow, that no one could take the estate [since there is no special provision in the law for this case.*] Therefore [the true interpretation is, that, in the case stated,] where the associated half brother might be supposed to be heir of his associated parcener, under the rule, that "a re-united brother shall keep the share of his re-united "co-heir," the maxim that "the uterine [or whole] brother "shall retain the allotment of his uterine relation," serves as an exception to that rule. Thus the half brother, though associated, cannot be supposed to be heir, if there be a brother of the whole blood. Then how does the succession go? The whole brother, whether re-united or not re-united in coparcenery, inherits the property.

S'RÍCARA's conclusion.

17. Refutation of his objection.

17 That is not congruent: for it is not true, that there is variableness in a precept, merely because two [rules†], which are severally applicable to two [cases‡], become applicable in a single instance at the same time.

18. An example of the incongruity of his reasoning.

18. Thus, in respect of the precepts enjoining the votary to bestow his whole wealth as a gratuity in one instance and no gratuity in the other, which are respectively applicable independently of each other, if either the priest doing the functions of *Udgátrĭ*, or the one performing the office of *Pratistótrĭ*, singly stumble [in passing from the one apartment to the other, at the celebration of the sacrifice called *Jyótishtóma*:§] but, if both those priests should stumble at the same time, neither injunction would be applicable; for that would be a variableness in the precept.

Annotations.

18. *If either the priest doing the functions of* Udgátrĭ.] Among the priests, who officiate at the sacrifice called *Jyótishtóma*, one is termed *Udgátrĭ* and another *Pratistotrĭ*. In the course of the ceremony, the priests proceed from one apartment named *Havird'hánin* to another denominated *Havihpávamána*. During their progress, if the *Udgátrĭ* happen to stumble, the votary is enjoined to bestow his whole wealth in a gratuity. But, if the *Pratistotrĭ* fall, the ceremony is terminated without any gratuity, or with a trifle only; and the sacrifice is to be re-commenced.

* S'RÍCRĬSHN'A. † ACHYUTA and S'RÍCRĬSHN'A. ‡ Ibid. § S'RÍCRĬSHN'A, &c.

19. In like manner, under the precepts, which direct the priest to touch an oblation with the prayer denominated *Cháturhótra* at the full moon, and with the prayer termed *Panchahótra* at the new moon; an oblation of curds consecrated to INDRA is understood in the sacrifice named *Upáns'uyága*, and an offering of milk consecrated to INDRA is similarly understoood at the *Agníshómíya* sacrifice; and, both precepts being thus severally applicable in those instances, neither of them would take effect at the *A'gnéya* sacrifice, since there would be variableness in the precept if both were applied to this case.

19. A further example.

20. Therefore, the definition of variableness in a precept is its being a positive injunction without reference to any opposition in one instance, and [an eventual one*] with reference to the opposition of a different precept in another instance. Thus, in the example stated (§ 16), the prohibition bears reference to the injunction concerning the altar, expressed in these words "At this sacrifice prepare "the *uttara-védi*." Without opposition to that [injunction†], it would be no precept. Therefore it is a command which bears reference to the injunction respecting the altar. Nor is it in constant opposition to it: for, were it so, the prohibition [as well as the injunction‡] would be useless; since, without the prohibition [and injunction,§] the omission of the altar might be deduced [from the silence of the law]. Therefore,

20. The instance referred to does not authorize the conclusion.

Annotations.

19. *The prayer denominated* Cháturhótra.] Beginning with the words *Prĭthwíhótá*. One, being four times called by PRAJA'PATI under the designation of *átman* or soul, replied in the words of this prayer. Hence he is named *chaturhuta* 'four times called;' and, for the sake of mystery, *chaturhótrĭ*; from which the name of the prayer is derived. (TAITTIRÍYA BRAHMAN'A; and MA'D'HAVA on *Mímánsá*. 3. 7. 4.)

The prayer termed Panchahótra.] It begins with the words *Agnih hótá*.

In the sacrifice named Upánsu-yága.] Sacrifices are directed to be performed at the full and change of the moon. The *Upánsu-yága* is one of those to be celebrated at full moon, and the *Agníshómíyá* at new moon. Curds constitute the oblation at one, and milk at the other of these sacrifices. The *A'gnéya* appertains to both periods; and both kinds of oblations are to be made on that occasion.

* CHU'DA'MAN'I. † S'RÍCRĬSHN'A. ‡ ACHYUTA. § Ibid.

even the injunction concerning the altar is a command which bears relation to the contrary prohibition; but, in regard to two of the periods of sacrifice, it is independent of any other rule. Consequently there is variableness in the precept; and an alternative must be inferred. But, in the case of any thing supposed as a matter of spontaneous option, a prohibition is an absolute forbiddance: for the occasional omission of the act was inferrible without the aid of an express prohibition.

21. A further illustration by an example.

21. Accordingly [since there is variableness in the precept, when a general and a particular rule, or injunction and prohibition, are sometimes applicable in the same instance, but not when two particular rules are so;* or since a prohibition, which is constant, is inferrible without the aid of either injunction or prohibition;†] the passages, which direct, that the *Shód'asin* shall be taken, and that it shall not be taken, [at an *Atirátra* sacrifice,] constitute an alternative.

22. An objection obviated.

22. But according to the doctrine of those, who affirm, that an alternative is inferred by this reasoning, namely, that, since a prohibition implies a previous supposition [to the contrary,] the [negative‡] precept does not obviate the cause; an alternative would be inferrible even in the instance of a prohibition concerning that which was suggested only as a matter of spontaneous choice: for example, the passage

Annotations.

21. *Passages, which direct that the* Shód'asin *shall be taken.*] One passage of the *Véda* expresses "at the *Atirátra* take the *Shód'asin*;" another, on the contrary, provides "at the *Atirátra* take not the *Shód'asin*." It is inferred, that an alternative must be admitted; and that the *Shód'asin* may optionally be used or not at the ceremony called *Atirátra*. (JAIMINI'S *Mímánsá*, 10. 8. 4.)

Shód'asin is a name for a vessel of a particular description. S'RÍCRÍSHN'A.

It is a wooden bowl employed at sacrifices in which the juice of acid asclepias is drunk.

22. *The passage which expresses "the priest makes not two portions,"* &c.] This passage, with the sequel of it which is here inserted between hyphens, forms the subject of a disquisition in JAIMINI'S *Mímánsá*. (10. 8. 3.)

* S'RÍCRÍSHN'A. † ACHYUTA. ‡ Ibid.

which expresses "The priest makes not two [portions of an "oblation of liquid butter] when a victim is offered; [nor "at the sacrifice with acid asclepias:"] and other similar passages.

23. A further reason.

23. Moreover, since an effect cannot preclude its own cause, how can there be in one case opposition [which is necessary to constitute an alternative ?] for the precepts are not equipollent. But, admitting that such is the nature of prohibition, that it eradicates its own cause; it should eradicate it altogether, for [the precept, which suggested] the previous supposition, is of inferior cogency.

24. Another argument refuted.

24. But they affirm, that this prohibition concerns the supposition of something which spontaneous choice may suggest, and is not a forbiddance of any thing deduced from a precept. That is an assertion which argues extreme ignorance: for it would follow, that an alternative does not exist; since the practice of what is commanded by precept, and the prohibition of a practice not commanded by precept, cannot be in opposition at the same time. The prohibition too would not be essential to the act of religion, since the practice of something suggested by spontaneous choice is not supposable as an essential part of a religious act.

25. Conclusion against S'RÍCARA's reasoning.

25. Therefore, [since the opposite opinion is erroneous,†] an alternative is inferred [not in the manner there proposed, but‡] according to the reasoning set forth by us [viz., that, if the prohibition be constant, both injunction and

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Annotations.

23. *The precepts are not equipollent.*] The author here alludes to a passage of GAUTAMA; "If there be contradiction between equal authorities, an "option is inferred."* ACHYUTA, S'RÍCRÍSHN'A, &c.

24. *Cannot be in opposition at the same time.*] 'Or may subsist in the 'same instance.' For S'RÍCRÍSHN'A notices two readings of this passage: *Upasanhárá-sambhavát* and *Upsanhára-sambhavát*.

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* GAUTAMA, 1. 4. † S'RÍCRÍSHN'A. ‡ Ibid.

prohibition would be unnecessary ; and, if the injunction were invariably cogent, the prohibition would be vain.*] But let that be ; for why expatiate ?

26. His inference is wrong ;

26. As for the remark of the same author, who says (§ 16) that, 'if there be a half brother associated and a whole brother unassociated, 'in which case the half brother might be 'supposed to be the heir under the rule, that "a re-united "brother shall keep the share of his re-united co-heir ;" '(§ 10) then the maxim, that "the uterine [or whole] "brother shall retain the allotment of his uterine relation," (§ 10) serves as an exception to that rule ;' that is unsuitable, for, in this very case, the rule concerning the re-united co-heir might on the contrary serve as an exception to the maxim, that "the uterine [or whole] brother shall "retain the allotment of his uterine relation," under which the whole brother might be supposed to be the heir : since there is not in this instance any ground of preference.

27. And the purport of the text, as stated by him,

27. But this author's interpretation of the text, "A "half brother being again associated, &c.," (§ 13), as explanatory of the passage "a re-"united brother shall keep the share of his "re-united co-heir," is quite wrong : for, the intended purport being conveyed by that text, the passage in question would become superfluous.

28. As well as the interpretation of it, is erroneous.

28. Moreover the exposition of the text [by S'RÍCARA†], as signifying 'Let not the half 'brother, who is an associated half brother, 'take the estate ; but the whole brother, '(this term is understood,) who is not re-'united, shall positively take it ; a son of a different mother, 'though united, shall not inherit ;' is also erroneous, for the same term 'half brother' in the first part of the text, is needlessly repeated ; and the phrase 'son of a different 'mother,' in the latter part of it, becomes superfluous ; and the particle *api* is taken in the sense of positively.

29. His exposition leaves a case unprovided for.

29. Besides, under the interpretation of the passage concerning the uterine [or whole] brother as an exception to the claim of the associated half brother if a whole brother unassociated exist ; and its consequent inappli-

* S'RÍCRISHN'A and ACHYUTA.

† Ibid.

cableness to the case of a whole brother and half brother both unassociated; these would have an equal right of succession [under the general maxim, that brothers shall inherit; Sect. 1. § 4.* since no distinction is specified :†] or else the property would belong to neither of them [if the general rule be explained by the particular one.‡]

30. Or else the objection alleged by him may be retorted.

30. But, if the passage concerning the uterine [or whole] brother be applicable to this case also, [taking the term "uterine" as intending such a brother generally, whether associated or unassociated,§] then the objection of variableness in the precept may be retorted on you; for the passage, concerning the re-united brother, bears reference to opposition in one case, [in that of the associated half brother and unassociated whole brother ;||] and bears no reference to opposition in another case, [in that of a whole brother and half brother both unassociated :¶] in like manner as it is declared, that the general rule for preparing the *védi* or altar at a sacrifice with the *Sóma* plant, must be understood as applicable to sacrifices in which the use of the altar has not been otherwise directed; since there would be variableness in the precept, if it operate in the case of the *Dícshin'íya* and other similar sacrifices, in bar of a command forbidding the altar suggested by the extension of a rule [concerning sacrifices celebrated at the full moon,] but in other instances operate without bar to any thing else.

Annotations.

30. *At a sacrifice with the* Sóma *plant.*] It is a general rule, that an altar is to be used at sacrifices in which the *Sóma* or *Asclepias acidá* is employed. An altar is also directed to be provided at sacrifices celebrated at the full of the moon. By extension of this rule to the *Dícshin'íya*, which is one part of the sacrifice to be celebrated at that period, the use of the altar is deducible from this as well as from the general rule abovementioned. Now, since the injunction is unnecessary as regarding what is otherwise known, it is supposed, that, to give operation to the injunction in this case, it must be taken as a bar to the inference deducible from an extension of a different rule. Hence it is considered liable to the objection of variableness.

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* ACHYUTA. † S'RÍCRÍSHN'A. ‡ S'RÍCRÍSHN'A and ACHYUTA.
§ S'RÍCRÍSHN'A. || Ibid. ¶ Ibid.

31. It is not a valid objection to the proposed construction.

31. But, according to our interpretation, there is no variableness in the precept, even as that is understood by S'RÍCARA: for the passages concerning the re-united brother and the uterine [or whole] brother (§ 10) are relative severally to different cases; and that regarding "a "half brother again associated" (§ 13) declares the equal participation of a whole brother unassociated and a half brother associated. Thus the meaning of the first part of that text is, 'a half brother, being re-united in co-parcenery, 'shall take the succession, although a whole brother not 're-united exist; but a half brother, who is not re-united, 'shall not inherit.' The latter part of the text is in answer to the question, does not the whole brother inherit in that case? 'Though not re-united, the whole brother (this term 'is understood) shall take the heritage; and not exclusively 'the son of a different mother who is again associated. 'But it shall be taken and shared by both.' Thus the alleged variableness in the precept is obviated.

32. A passage of MENU confirms the interpretation.

32. So MENU likewise shows the same rule of succession. "His uterine brothers and sisters, "and such brothers as were re-united after "a separation, shall assemble together and "divide his share equally."*

33. Exposition of his text and refutation of a contrary inference from it.

33. Reciprocation being indicated by the plural number, in the term "uterine brothers," as respecting these exclusively; and in the words "brothers re-united," as relating to the half brothers; the words "assemble together" are properly employed to mark association of both [descriptions of brethren;†] for they would otherwise be unmeaning terms. Therefore it is from mere ignorance that it has been asserted, that both [do not inherit together,‡] because reciprocation is not expressed by the text. Moreover, since the text exhibits the conjunctive particle "and," in the phrase "and such brothers as "were re-united, &c.," and the rule [of grammar] expresses, that a conjunctive compound is used when the sense of the conjunctive particle is denoted;§ the assertion, that reciprocation is not expressed by the text, would imply, that

* MENU, 9. 212. † S'RÍCRISHN'A. ‡ ACHYUTA. § PA'N'INI, 2. 2. 29.

even the conjunction does not bear that sense [viz., the sense of reciprocation.*]

34. The whole brother inherits in preference to a half brother, if neither be re-united.
A passage of *Vrihat* MENU confirms this.

34. Therefore, if whole brothers and half brothers only [not re-united brothers of either description†] be the claimants, the succession devolves exclusively on the whole brothers. Accordingly *Vrihat* MENU says, "If a son of the "same mother survive, the son of her rival "shall not take the wealth. This rule shall "hold good in regard to the immovable "estate. But, on failure of him, [the half brother] may "take the heritage."

35. It relates to divided immovables.
A corresponding passage of YAMA.

35. This rule shall hold good in regard to the immovable estate.] This rule is relative to divided immovables. For, immediately after treating of such [property,] YAMA says, "The "whole of the undivided immovable estate "appertains to all the brethren; but divided "immovables must on no account be taken by the half "brother."

36. The succession devolves on the re-united whole brother in preference to one not re-united.

36. All the brethren.] Whether of the whole blood or of the half blood. But, among whole brothers, if one be re-united after separation, the estate belongs to him. If an unassociated whole brother and re-united half brother exist, it devolves on both of them. If there be only half brothers, the property of the deceased must be assigned in the first instance to a re-united one; but, if there be none such, then to the half brother who is not re-united.

37. Reason of the use of the plural number in a passage before cited. (Sect. 1. § 4.)

37. Accordingly the plural number is employed‡ in the term "brothers," (Sect. 1. § 4) for the purpose of indicating the succession of all descriptions of them, in the order here stated. Else it would be unmeaning.

Annotations.

36. *All the brethren.*] Effects other than immovables go to the brothers of the whole blood whether separated or unseparated. RAGH. *Dáyatatwa.*

* ACHYUTA and S'RÍCRISHN'A. † Ibid. ‡ Vide Sect. 2. § 27.

38. The passage under consideration (§ 10) provides a special rule.

38. The text, "a re-united [brother] shall keep the "share of his re-united co-heir," (§ 10) is intended to provide a special rule governed by the circumstance of re-union after separation, and applicable to the case where a number of claimants in an equal degree of affinity occurs.

39. It is applicable to nephews and uncles, as well as to brothers.

39. Hence, if there be competition between claimants of equal degree, whether brothers of the whole blood, or brothers of the half blood, or sons of such brothers, or uncles, or the like, the re-united parcener shall take the heritage: for the text does not specify the particular relation; and all [these relations] were premised in the preceding text (Sect. 1. § 4*); and a question arises in regard to all of them. Therefore the text must be considered as not relating exclusively to brothers.

40. Conclusion

40. Thus the brother's right of succession has been explained.

SECTION VI.

On the Nephew's right of Succession,—and that of other heirs.

1. After brothers, nephews inherit.

1. On failure of brothers, the brother's son is heir: for the text of Vishn'u, having declared "it "goes to the brothers," proceeds "After "them it descends to the brother's sons."†

2. The whole blood first, and then the half blood.

2. Among these, the succession devolves first on the son of a uterine [or whole] brother; but, if there be none, it passes to the son of the half brother. For the text expresses, "An "uterine [brother] shall retain or deliver

Annotations.

2. *For the text expresses "an uterine brother," &c.*] Although there be no text which declares the right of a nephew of the whole blood before a nephew of

* S'rícrishn'a. † Sect. 1. § 5.

"the allotment of his uterine relation" (Sect. 5. § 10). Indeed the son of the half brother, being a giver of oblations to the father of the late proprietor, together with his own grandmother, to the exclusion of the mother of the deceased owner, is inferior to a son of a whole brother [who is a giver of oblations to the grandfather in conjunction with the mother of the deceased.*]

3. Stepmothers do not participate, like the natural mother, in the funeral oblations.

3. Nor can it be pretended that the stepmother, grandmother, and great grandmother take their places at the funeral repast, in consequence of [ancestors being deified†] with their wives: for the terms "mother" [grandmother and great grandmother‡] &c. [in such text as the following§] bear their original sense of 'his own natural mother,' 'father's natural mother;' and 'grandfather's natural mother;' and it is by those terms that they are described as taking their places at the funeral repast. Thus it is said, "A mother tastes with her husband the "funeral repast consisting of oblations to the manes; "and the paternal grandmother with her husband; and the "paternal great grandmother with her's." But the introduction of stepmothers and the rest to a place at the periodical obsequies, is expressly forbidden. Thus the sage declares, "Whosoever die, whether man or woman, without "male issue, for such person shall be performed funeral rites "peculiar to the individual, but no periodical obsequies."

4. It would be a contradiction.

4. Besides, the command for the celebration of the funeral repast in honor of ancestors with their wives, is of invariable exigency; as it is universally acknowledged: but, since there are not stepmothers in every instance, the precept must relate to the natural mother; for the association of the variable and invariable exigency of the same command would be a contradiction.

Annotations.

the half blood; yet, under the passage cited, which shows, that in the case of brothers, the whole blood excludes the half blood, it is reasonable, that the son of an excluded person should be debarred by the son of the person who excludes him. S'RÍCRÍSHN'A and ACHYUTA.

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* S'RÍCRÍSHN'A. † S'RÍCRÍSHN'A and ACHYUTA. ‡ Ibid. § S'RÍCRÍSHN'A.

5. Since the paternal uncle, like the nephew of the whole blood, offers two oblations, which the owner was bound to present, to two ancestors with their wives, should not the succession devolve equally on the uncle and nephew of the late proprietor? The answer is, the paternal uncle is indeed a giver of oblations to the grandfather and great grandfather of the proprietor; but the nephew is giver of two oblations to two ancestors including the owner's father who is principally considered. He is therefore a preferable claimant, and inherits before the uncle.

5. The paternal uncle has not equal pretensions with the nephew.

6. Accordingly [since superior benefits are conferred by such a successor,*] the brother's grandson excludes the paternal uncle; for he is a giver of oblations to the deceased owner's father who is the person principally considered.

6. Even the brother's grandson inherits before him.

7. But the brother's great grandson, though a lineal descendant of the owner's father, is excluded by the paternal uncle: for he is not a giver of oblations, since he is distant in the fifth degree. Thus MENU says, "To three "must libations of water be made, to three must oblations "of food be presented; the fourth in descent is the giver "of those offerings: but the fifth has no concern with "them."† By this passage the fifth in descent is debarred.

7. But the brother's great grandson is excluded, as too remote.

8. But, on failure of heirs of the father down to the great grandson, it must be understood, that the succession devolves on the father's daughter's son [in preference to the uncle;‡] in like manner as it descends to the owner's daughter's son [on failure of the male issue, in preference to the brother.]

8. The sister's son also inherits before the uncle.

Annotations.

8. *In like manner as it descends to the daughter's son.*] Although the succession ought previously to devolve on the sister, as it goes to the daughter before the daughter's son, nevertheless she is excluded from the succession because she is no giver of oblations at periodical obsequies; being disqualified by sex. But the daughter's right of inheritance before the daughter's son takes effect under the special provisions of an express text. (Sect. 2. § 14.) S'RÍCRÍSHN'A.

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* S'RÍCRÍSHN'A. † MENU, 9. 186. Vide Supra. Sect. 1. § 40.
‡ ACHYUTA and S'RÍCRÍSHN'A.

9. The succession of the grandfather's and great grandfather's lineal descendants including the daughter's son, must be understood in a similar manner, according to the proximity of the funeral offering: since the reason stated in the text "for even the "son of a daughter delivers him in the next world, like the "son of a son,"* is equally applicable; and his father's or grandfather's daughter's son, like his own daughter's son, transports his manes over the abyss, by offering oblations of which he may partake.

9. So the daughter's son of the grandfather and great grandfather are the last heirs in those several lines.

10. Accordingly MENU has not separately propounded their right of inheritance: for they are comprehended under the two passages, "To three must libations of water be made, "&c.,"† and "To the nearest kinsman "*(sapin'd'a)* the inheritance next belongs."‡ YA'JNYAWALCYA likewise uses the term "gentiles" or kinsmen *(gótraja)*§ for the purpose of indicating the right of inheritance of the father's and grandfather's daughter's son, as sprung from the same line, in the relative order of the funeral oblation; and for the further purpose of excluding females related as *sapin'd'as*, since these also sprung from the same line.

10. MENU and YA'JNYAWALCYA have not specified, but only indicated, their succession.

11. Accordingly [since they are excluded,||] BAUD'HA'YANA, after premising "A woman is "entitled," proceeds "not to the heritage; "for females, and persons deficient in an "organ of sense or member, are deemed incompetent to "inherit." The construction of this passage is 'a woman is not entitled to the 'heritage.' But the succession of the widow and certain others [viz., the daughter, the mother, and the paternal grandmother,¶] takes effect under express texts, without any contradiction to this maxim.

11. In general, a female is incapable of inheriting.

But a widow, a daughter and mother are specially excepted.

Annotations.

11. *Females are deemed incompetent to inherit.*] Whether bearing the same or a different family name. Therefore the son's daughter has no right of inheritance. RAGH. on *Dáya-bhága.*

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* MENU, 9. 139. † Ibid, 9. 186. ‡ Ibid, 9. 187. Vide Infra. § 17 and 21.
§ Vide Sect. 1. § 4. || S'RÍCRÍSHN'A. ¶ ACHYUTA and S'RÍCRÍSHN'A.

12. failure of the paternal line, the property devolves on the maternal kindred.

On failure of any lineal descendant of the paternal great grandfather, down to the daughter's son, who might present oblations in which the deceased would participate; to intimate, that, in such case, the maternal uncle shall inherit in consequence of the proximity of oblations, as presenting offerings to the maternal grandfather and the rest, which the deceased was bound to offer, YA'JNYAWALCYA employs the term "cognates" *(bandhu)*.* But MENU has indicated it only by a passage declaratory of succession according to the nearness of the oblation.

13. For the property should be so applied to the spiritual benefit of the deceased:

13. Since the maternal uncle and the rest present three oblations to the maternal grandfather and other ancestors, which the deceased was bound to offer, therefore the property should devolve on the maternal uncle and the rest: for it is by means of wealth, that a person becomes a giver of oblations. Two motives are indeed declared for the acquisition of wealth: one temporal enjoyment, the other the spiritual benefit of alms and so forth. Now, since the acquirer is dead and cannot have temporal enjoyment, it is right that the wealth should be applied to his spiritual benefit. Accordingly VRĬHASPATI says, "Of property which "descends by inheritance, half should care- "fully be set apart for the benefit of the deceased owner to "defray the charges of his monthly, six-monthly, and annual "obsequies." So A'PASTAMBA ordains, "Let the pupil or "the daughter apply the goods to religious purposes for the "benefit of the deceased." By saying to defray the charges "of his monthly, &c., obsequies," his participation, and by directing "religious purposes" his spiritual benefit, are stated as reasons. Accordingly the sage says, "Wealth is useful for alms and for enjoyment." It is reasonable, therefore, that, on failure of kindred who might present oblations in which he would participate, the succession should devolve on the maternal uncle and the rest, who present oblations which he was bound to offer.

conformably with texts of VRĬHASPATI and A'PASTAMBA.

14. After the kindred on the mother's side, the

14. Accordingly [since the succession devolves on heirs down to the maternal uncle and the rest, in the order of oblations in which the deceased may participate, or which he was

* Vide Sect. 1. § 4.

distant kinsman is heir: according to a passage of MENU.

bound to offer;*] MENU, considering that purport as sufficiently indicated by the two passages above cited, "To three must libations be made, &c." "To the nearest kinsman the inheritance next belongs;" (vide § 7. and 17) proceeds thus, "Then, on failure of such kindred, the distant kinsman shall be the heir, or the spiritual preceptor, or the pupil."†

15. He is the descendant of the grandfather's grandfather or remoter ancestor. After these, the preceptor or the pupil.

15. The distant kinsman *(saculya)* is the descendant of the paternal grandfather's grandfather or other remote ancestor. Such relatives are denominated *Samánódacas*. Their order of succession is in the series as exhibited. On failure of such heirs [down to the *Samánódaca*‡] the succession devolves on the spiritual preceptor, the pupil, &c.

16. Such must be MENU's intention.

16. Otherwise [if the text of MENU do not intend the maternal uncle and the rest,§] how is the admission of maternal uncles and others affirmed without contradiction to MENU? Therefore this meaning is intended by him in the passage above cited and there is no contradiction.

17. As appears from several passages.

17. Accordingly, having declared, while treating of inheritance, "To three must libations of "water be made; to three must oblations "of food be presented; the fourth in des"cent is the giver of those offerings; but the fifth has no "concern with them;"|| he adds, "To the nearest kinsman "*(sapin'd'a,)* the inheritance next belongs;"¶ for the purpose of showing, that the fifth in descent, not being connected even by a single oblation, is not the heir, so long as a person connected by a single oblation, whether sprung from the father's or the mother's family, exists. Otherwise, since the relation of *sapin'd'a* has been declared by a distinct text, (" Now the relation of *sapin'd'a* or men connected by the "funeral cake, ceases with the seventh person;"**) and the right of the fourth in descent to inherit is declared by the text " To the nearest kinsman the inheritance next belongs;"†† the passage, which begins "To three must

* S'RÍCRÍSHN'A. † MENU, 9. 187. Vide Infra. § 21. ‡ S'RÍCRÍSHN'A. § Ibid. || MENU, 9. 186. ¶ Ibid, 9. 187. ** Ibid, 5. 60. †† Ibid, 9. 187.

"libations be made, &c.,"* would be superfluous. It cannot be said, that it is intended to direct the celebration of the funeral repast in honour of three ancestors: for it is inserted in the midst of a disquisition concerning inheritance; and the funeral repast is ordained by a different text. Thus MENU says, "Let the householder honor the sages by "duly studying the *Véda*; the gods by oblations to fire "as ordained by law; the manes, by pious obsequies; men, "by supplying them with food; and spirits, by gifts to all "animated creatures."†

18. Nearness of kin is not by birth.

18. Nor should it be pretended, that the text [of MENU, "To the nearest *sapin'd'a*, &c." §17‡] is intended to indicate nearness of kin according to the order of birth, and not according to the presentation of offerings: for the order of birth is not suggested by the text. But MENU, declaring, that oblations of food, as well as libations of water, are to be offered to three persons, and that the fourth in descent is a giver of oblations, but neither is the fifth in ascent a receiver of offerings, nor the fifth in descent a giver of them, thus declares nearness of kin, and shows that it depends on superiority of [benefits by§] presentation of oblations.

19. The kindred on the mother's side therefore inherit;

19. Therefore a kinsman, who is allied by a common oblation as presenting funeral offerings to three persons in the family of the father, or in that of the mother, of the deceased owner, such kinsman having sprung from his family though of different male descent, as his own daughter's son or his father's daughter's son, or having sprung from a different family as his maternal uncle or the like, [is heir :||] and the text ("To three must libations of "water be made," &c., § 7) is intended to propound the succession of such kinsmen; and the subsequent passage ("To "the nearest *sapin'd'a*," &c., § 17) must be explained as meant to discriminate them according to their degrees of proximity.

20. On failure of paternal kindred connected by funeral oblations.

20. The order of succession then must be understood in this manner: on failure of the father's daughter's son or other person who is a giver of three oblations (presented to the father, &c.) which the deceased shares or which he was bound to offer, the succession devolves in the next

* MENU, 9. 186. † Ibid, 3. 81. ‡ ACHYUTA. § Ibid. || S'RÍCRÍSHN'A.

place on the maternal uncle and others [namely, his son or grandson*] who offer oblations to the maternal grandfather and the rest which the deceased was bound to present.

21. After them, the distant kindred.

21. But on failure of kin in this degree, the distant kinsman (*saculya*) is successor. For MENU says, "Then, on failure of such kindred, "the distant kinsman shall be the heir, or "the spiritual preceptor, or the pupil."† The distant kinsman (*saculya*) is one who shares a divided oblation (Sect. 1. § 37) as the grandson's grandson or other descendant within three degrees reckoned from him; or as the offspring of the grandfather's grandfather or other remoter ancestor.

22. First, the grandson's grandson and his descendants. Then the descendants of the grandfather's grandfather, &c.

22. Among these claimants [whether ascending or descending‡], the grandson's grandson and the rest are nearest, since they confer benefits by means of the residue of oblations which they offer. [These descendants are therefore heirs.§] On failure of such, the offspring of the paternal grandfather's grandfather inherits in right of oblations presented to the paternal grandfather's grandfather and other ancestors who are sharers of the residue of oblations which the deceased was bound to offer.

Annotations.

20. *The succession devolves in the next place on the maternal uncle, &c.*] On failure of persons who are givers of oblations in which the deceased may participate, the kinsman [that is, the maternal grandfather, or maternal uncle, and so forth] is heir. Here also, as in the instance of the father and paternal ancestors, if the maternal grandfather be living, he is heir; but, on failure of him, the maternal uncle and other maternal kindred in order; for they present oblations, which the deceased was bound to offer. RAGH. *Dáyatatwa.*

21. *The distant kinsman is one who shares a divided oblation.*] The *saculya* is of two descriptions; descending and ascending. The first intends the son of the great grandson and the rest to the third degree in the descending line; the other signifies the great grandfather's father and other ancestors to the third degree in the ascending line. S'RÍCRÍSHN'A, *Carma-sangraha.*

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* S'RÍCRÍSHN'A. † MENU, 9. 187. Vide Supra. § 11. ‡ S'RÍCRÍSHN'A. § Ibid.

23. Next remote kindred.

23. If there be no such distant kindred, the *Samánódacas*, or kinsmen allied by a common libation of water, must be admitted to inherit, as being signified by the term *saculya* [conformably with BAUD'HA'YANA's explanation of it: Sect. 1. § 37.*]

24. After these, the preceptor, pupil, and fellow-student.

24. On failure of these, the spiritual preceptor [or instructor in knowledge of the *véda*†] is the successor. In default of him, the pupil [or student of the *véda*] is heir: by the text of MENU, "or the spiritual preceptor or "the pupil." (§ 14.) On failure of him likewise, the fellow-student; by the text [of YA'JNYAWALCYA] "a pupil and a "fellow-student." (Sect. 1. § 4.)

25. Then persons bearing the same family name; and descendants from the same patriarch.

25. In default of these claimants, persons bearing the same family name (*gótra*) are heirs. On failure of them, persons descended from the same patriarch are the successors. For the text of GAUTAMA expresses "Persons allied "by funeral oblations, family name and "patriarchal descent, shall share the herit-"age [of a childless man; or his widow shall partake."‡]

26. Next *Brahman'as*.

26. On failure of all heirs as here specified, let the priests take the estate. Thus MENU says, "On failure of all those, the lawful heirs "are such *Brahman'as*, as have read the "three *védas*, as are pure in body and mind, as have sub-"dued their passions. Thus virtue is not lost."§ Virtue, which would be extinguished by the ample enjoyment [of its reward,] but is renewed by the acquisition of fresh merit through the circumstance of his wealth devolving on *Brah-*

Annotations.

25. *Or his widow shall partake.*] The passage, as cited in the text, was incomplete: the compiler having omitted the close of it, which is declaratory of the widow's participation. The defect of the quotation has been supplied. As the original passage stands in GAUTAMA's Institutes, it is not easily reconcilable with JÍMU'TA-VA'HANA's doctrine of the widow's preferable title.

26. *Virtue which would be extinguished, &c.*] This differs from CULLU'CA-BHAT'T'A's interpretation, which makes the passage relate to funeral rites: "thus "the rites of obsequies cannot fail."

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* ACHYUTA. † S'RÍCRISHN'A. ‡ GAUTAMA, 28. 19. § MENU, 9. 188.

man'as, is not lost. Here also the author indicates the appropriation of the property for the benefit of the deceased.

27. Lastly, the king.

27. In default of them, the king shall take the wealth: excepting, however, the property of a *Brahman'a*. A failure of descendants from the same patriarch and of persons bearing the same family name, as well as of *Brahman'as*, must be understood as occurring when there are none inhabiting the same village: else an escheat to the king could never happen.

28. Unless this doctrine be admitted, the maternal uncle and the rest, not being specified, would have no right of inheritance.

28. If the right of the father's daughter' son, and of the maternal uncle and the rest, be not considered as intended by the text, "To "three must libations of water be made, "&c." (§ 7) they would have no right of succession, since they have not a place among distant kinsmen and others, whose order of succession is specified. Nor can this be deemed an admissible inference, since they are indicated by YA'JNYAWALCYA under the terms "Gentiles and cognates" (Sect. 1. § 4.) Consequently it must be affirmed, that they have been indicated by MENU in this text (§ 7). Therefore such order of succession must be followed, as will render the wealth of the deceased most serviceable to him.

29. On the same principle of inheritance in right of benefits conferred, is the equal succession of the son, grandson, and great grandson, justified; as well as the exclusion of the two last, if their fathers be living.

29. Accordingly [since inheritance is in right of benefits conferred, and the order of succession is regulated by the degree of benefit;*] the equal right of the son, the son's son, and the son's grandson, is proper: for their equal pretensions are declared in the text, "By "a són a man conquers worlds," &c. (Sect. 1. § 31), and in other similar passages. They equally present oblations to the deceased. Hence also the grandson and great grandson, whose fathers are living, do not inherit, for they do not confer benefits, since they are forbidden to celebrate the periodical obsequies by skipping the surviving father; the law providing, that oblations shall not be presented, overpassing a living person. Otherwise these [sons and grandsons, whose fathers are living,†] would have the same right of inheritance with those whose fathers are deceased. Or the

* S'RÍCRÍSHN'A. † ACHYUTA and S'RÍCRÍSHN'A.

son alone would inherit as nearest of kin in the order of birth, to the exclusion of the son's son and son's grandson. Neither is there any express text declaratory of the equal rights of three descendants, son, grandson, and great grandson. Therefore it must be inferred, that the parity in their right of inheritance arises from the equal benefits conferred by them.

30. In every case the wealth is appropriated in the manner most serviceable to the deceased.

30. In like manner the appropriation of the wealth of the deceased to his benefit, in the mode which has been stated, should in every case be deduced according to the specified order.

31. Menu and the rest assent to this doctrine.

31. This doctrine, [that inheritance is deducible from reasoning and founded on services rendered,*] must be admitted to have the assent of Menu and other sages: for there can be no other purpose of propounding, under the head of inheritance, the superior benefits derived from sons and the rest; and the exoneration of the father from debt is stated as a reason for the son's inheriting: ("By the eldest son a "man is exonerated from debt to his ancestors; therefore "that son is entitled to take the heritage." Sect. 1. § 32) redemption also is exhibited as a cause of succession to property: ("Even the son of a daughter delivers him in the next world like the son of a son."†) and there is no other reason for the equal right of inheritance of three descendants, the son and the rest, besides their deliverance [of their ancestors;] and the passage, "To three must libations "of water be made, &c." (§ 7) would be unnecessary [if such were not the purpose;‡] and the exclusion of persons impotent, degraded, blind from their birth and so forth, is an apposite rule as founded upon their rendering no services; [but not so as grounded on the mere letter of the law:§] and it is troublesome to establish an assumed precept for debarring those before whom an heir intervenes; [as must be done

Annotations.

31. *Before whom an heir intervenes.*] As the grandson or great grandson, whose own father is living, and so forth. S'RÍCRÍSHN'A.

* S'RÍCRÍSHN'A.

† MENU, 9. 139. Vide Supra. C. 4. Sect. 2. § 10.

‡ S'RÍCRÍSHN'A.

§ Ibid.

upon any other supposition :] and it is reasonable, that the wealth, which a man has acquired, should be made beneficial to him by appropriating it according to the degree in which services are rendered to him.

32. It is maintained by UDYO'TA;

32. This doctrine, as illustrated by the irreproachable UDYO'TA,* should be respected by the wise.

33. And is consistent with the letter of the law.

33. If the learned be yet unsatisfied [with relying on reason† for the ground of the law of inheritance,] this doctrine may be derived from express passages of law. Still the same interpretation of both texts [of MENU, § 7. and 17] must be assumed. But let this be. What need is there of expatiating?

34. The king takes the escheat on failure of heirs, excepting the wealth of a priest. So MENU declares.

34. Excepting the property of a *Brahman'a*, let the king take the wealth [on failure of heirs]. So MENU directs, "The property of a *Brah-* "*man'a* shall never be taken by the king: "this is a fixed law. But the wealth of the "other classes, on failure of all [heirs,] "the king may take."‡ By the term "all" is signified every heir including the *Brahman'a* (§ 26).

35. Special rule of succession in the instance of religious orders: conformably with a passage of YA'JNYAWALCYA.

35. The goods of a hermit, of an ascetic, and of a professed student, let the spiritual brother, the virtuous pupil, and the holy preceptor, take. On failure of these, the associate in holiness, or person belonging to the same order, shall inherit. Thus YA'JNYAWALCYA says, "The heirs of a hermit, of an ascetic, "and of a professed student, are, in their order, the pre- "ceptor, the virtuous pupil, and the spiritual brother and "associate in holiness."§

Annotations.

35. *The associate in holiness or person belonging to the same order.*] This is according to the author's apprehension of the meaning of the text: but in fact, 'associate in holiness' is an epithet 'of spiritual brother.' S'RÍCRÍSHN'A.

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* Vide Supra. C. 2. § 9.

† ACHYUTA and S'RÍCRÍSHN'A.

‡ MENU, 9. 189.

36. Exposition of the text.

36. Goods, such as they may happen to possess, should be delivered in the inverse order of this enumeration. The student must be understood to be a professed one: for, abandoning his father and relations, he makes a vow of service and of dwelling for life in his preceptor's family. But the property of a temporary student would be inherited by his father and other relations.

37. Conclusion.

37. Thus has the distribution of the wealth of one, who leaves no male issue, been explained.

Annotations.

36. *Goods such as they may happen to possess*], viz., the hoard of wild rice or other property of a hermit: the gourd, clout, and other effects of an ascetic; and the books, clothes, and other goods of a student.

Recapitulation by S'RICRISHN'A TARCA'LANCA'RA.

The order of succession to the property of a deceased man, is this. First, the son inherits; on failure of him, the son's son; in his default, the son's grandson. However, a grandson whose father is dead, and a great grandson whose father and grandfather are deceased, inherit at once with the son. On failure of descendants down to the son's grandson, the wife inherits: and she, having received her husband's heritage, should take the protection of her husband's family or of her father's, and should use her husband's heritage for the support of life, and make donations and give alms in a moderate degree, for the benefit of her deceased husband; but not dispose of it at her pleasure, like her own peculiar property. If there be no widow, the daughter inherits; in the first place, a maiden daughter; or on failure of such, an affianced daughter: but, if there be none, a married daughter: and she may be one, who has, or is likely to have, male issue; for both these inherit together: but one who is barren, or who is become a widow having no male issue, is incompetent to inherit. On failure of the married daughter, a daughter's son is heir. If there be none, the father succeeds; or, if he be dead, the mother. If she be deceased, a brother is the successor. In the first place, the uterine (or whole) brother; if there be none, a half brother. But, if the deceased lived in renewed co-parcenery with a brother, then, in case of all being of the whole blood, the associated whole brother is heir in the first instance; but, on failure of him, the unassociated whole brother. So, in case of all being of the half blood, the associated half brother inherits in the first place, and on failure of him the unassociated half brother. But, if there be an associated half brother and an unassociated whole brother, then both are equal heirs. In default of brothers, the brother's son is the successor. Here also a nephew of the whole blood inherits in the first instance; and on failure of such, the nephew of the half blood; but, in case of re-union of co-heirs, and on the supposition of all being of the whole blood, the associated son of the whole brother is in the first place heir;

and, on failure of him, the unassociated nephew of the whole blood: or, on the supposition of all being of the half blood, the associated nephew of the half blood, is the first heir; and, on failure of him, the unassociated nephew. But, if the son of the whole brother be separate, and the son of the half brother associated, both inherit together, like brothers in similar circumstances. If there be no brother's son, the brother's grandson is heir. Here likewise the distinction of the whole blood and half blood, and that of re-united parcenery and disjointed parcenery, must be understood. On failure of the brother's grandson, the father's daughter's son is the successor: whether he be the son of the sister of the whole blood, or the son of a sister of the half blood.* If there be none, the father's own brother is heir; or, in default of such, the father's half brother. On failure of these, the succession devolves in order on the son of the father's whole brother, on the son of his half brother, on the grandson of his whole brother, and on the grandson of his half brother. In default of these, the paternal grandfather's daughter's son inherits; and, in this instance also, whether he be son of the father's own sister or son of the father's half sister: and, in like manner, [the whole blood and half blood inherit alike] in the subsequent instance of the succession devolving on the son of the great grandfather's daughter. On failure of these heirs, the paternal grandfather is the successor. If he be dead, the paternal grandmother inherits. If she be deceased, the paternal grandfather's own brother, his half brother, their sons, and grandsons, and the great grandfather's daughter's son, are successively heirs. On failure of all such kindred, who present oblations in which the deceased owner may participate, the succession devolves on the maternal uncle† and the rest, who present oblations which the deceased was bound to offer. In default of these, the heritage goes to the son of the owner's maternal aunt. Or, failing him, it passes successively to the son and grandson of the maternal uncle.‡ On failure of these, the right of inheritance accrues to the remote kindred in the descending line, who present the residue of oblations to ancestors with whom the deceased owner may participate, namely, to the grandson's grandson and other descendants for three generations in succession. In default of these, the ininheritance returns to the ascending line of distant kindred, by whom oblations are offered, of which the deceased owner may partake, namely, to the offspring of the paternal grandfather's grandfather and other ancestors, in the order of proximity. On failure of these, the succession devolves on the *Samánódacas* or kindred allied by a common oblation of water. In default of them, the spiritual preceptor is heir; or, if he be dead, the pupil; or, failing him, the fellow-student in theology. If there be none, the inheritance devolves successively on a person bearing the family name, and on one descended from the same patriarch, in either case being an inhabitant of the same village. On failure of all relatives as here specified, [the property devolves on *Brahman'as* learned in the three *Védas* and endowed with other requisite qualities:§ and, in default of such,] the king shall take the escheat, excepting however the property of a *Brahman'a*. But the priests, who have read the three *Védas* and possess other requisite qualities, shall take the wealth of a deceased *Brahman'a*.

So the goods of an anchoret shall devolve on another hermit considered as his brother and serving the same holy place. In like manner the goods of

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* The son of the proprietor's own sister, and the son of his half sister, have an equal right of inheritance; according to A'CHA'RYA, CHU'DA'MAN'I, S'RÍCRISHN'A, *Cramasangraha*.

† The maternal grandfather inherits before his son the maternal uncle, according to the *Dáyatatwa* of RAGHUNANDANA and *Crama-sangraha* of S'RÍCRISHN'A.

‡ See the note subjoined to this summary.

§ *Crama-sangraha*.

an ascetic shall be inherited by his virtuous pupil: and the preceptor shall obtain the goods of a professed student. But the wealth of a temporary student is taken by his father or other heir. Such is the abridged statement of the law of inheritance. S'RÍCRÍSHN'A.

Remark by the Translator.

The son and grandson of the maternal uncle ought to precede the son of the maternal aunt, by the analogy of the rule of inheritance on the father's side. But three collated copies of S'RÍCRÍSHN'A's commentary agree in stating the order of succession as here exhibited. On the other hand, the same author, in his original treatise on inheritance entitled *Crama-sangraha*, exhibits the succession on the mother's side in the following order: 'first the maternal grand- 'father; next the maternal uncle; then the maternal uncle's son; after him, 'the maternal uncle's son's son; and subsequently the maternal grandfather's 'daughter's son: [on failure of these, the maternal great grandfather, his son, 'his son's son, his son's grandson, and his daughter's son: again, on failure of 'these, the maternal grandfather's grandfather, his son, his son's son, his son's 'grandson, and his daughter's son.'*] It must be remarked, however, that the text of S'RÍCRÍSHN'A's treatise, according to some copies of it, interposes the mother's sister's son between the maternal uncle and his son. But that is an evident mistake; for the mother's sister's son is the same with the maternal grandfather's daughter's son, who is placed by the same author after the maternal uncle's grandson.

The author of the *Dáya-nirn'aya* states the succession differently, viz., 'First, the maternal uncle; then the maternal uncle's son; next the maternal 'grandfather; after him, the mother's sister's son; subsequently the mater- 'nal uncle's son's son; and lastly the maternal great grandfather.' He gives reason founded on the number of oblations deemed beneficial to the deceased owner.

JAGANNA'T'HA TARCAPANCHA'NANA intimates the opinion, that the son of a son's daughter, or of a grandson's daughter, or of a niece, or of a nephew's daughter, are entitled to the succession before the maternal grandfather. *(Digest of Hindu Law*, Vol. IV., p. 230.)

I find nothing else upon the subject in other writers of the *Bengal* school; and, amidst this disagreement of authors, I should be inclined to give the preference to the authority of S'RÍCRÍSHN'A's *Crama-sangraha;* because the order of succession on the mother's side, as there stated, follows the analogy of the rule of inheritance on the father's side. C.

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* That part of the text which is enclosed between crotchets is wanting in some copies of the *Crama-sangraha.*

CHAPTER XII.

On a second partition of property after the re-union of co-parceners.

1. When partition is again made after re-union of parceners, the shares must be equal.
So MENU, &c.

1. NEXT the partition of the property of re-united co-parceners is explained. On that subject MENU and VISHN'U say, "If brethren, once "divided and living again together as par- "ceners, make a second partition, the shares "must in that case be equal: there is not "in this instance any right of primogeniture."*

2. That is, the superior allotment in right of primogeniture is forbidden.

2. The shares must be equal.] This supposes re-union of brothers belonging to the same tribe. But, in the case of association of brothers appertaining, the one to the sacerdotal, and the other to the military tribe, the rule of distribution must be understood to conform with the original allotment of shares: for the text is intend-

Annotations.

1. *Property of re-united co-parceners.*] According to the doctrine of those who contend for a general property of co-parceners in the aggregate estate, re-united property is wealth in which an aggregate property is raised by the annulment of previously vested several rights, through a stipulation or agreement with a father, brethren, &c., concluded subsequently to partition with one accord, to this effect 'the wealth, which is thine, is mine: and that, which is 'mine, is thine.' But, according to the author's doctrine, it is wealth in which undistinguished several rights are raised by the annulment of the previous several rights through a stipulation as abovementioned. S'RÍCRISHN'A.

* MENU. 9. 210. VISHN'U. 18. 41.

ed only to forbid an elder brother's superior portion as before allotted to him. Accordingly [since unequal partition, regulated by difference of tribes, is not denied;*] VRĬHASPATI, saying "Among "brethren, who, being once separated, again "live together through mutual affection, there is no right of "primogeniture when partition is again made;" prohibits only the assignment of a superior share to the eldest, but does not ordain equality of allotments.

A passage of VRĬHASPATI confirms this construction.

3. Re-united co-parceners are described by VRĬHASPATI: "He, who, being once separated, "dwells again, through affection, with his "father, brother or paternal uncle, is termed "re-united."

3. Definition of "re-united co-parcener," in a passage of VRĬHASPATI.

4. A special association among persons other than the relations here enumerated, is not to be acknowledged as a re-union of parceners: for the enumeration would be unmeaning.

4. It is restricted to certain relations: father and son; brothers, uncle and nephew.

5. Other particular rules, which have been set forth under the head of partition among brothers, must be observed in this case also.

5. Other rules hold good in this as in any partition among brothers.

6. Thus has the right of a re-united parcener been explained.

6. Conclusion.

Annotations.

5. *Other particular rules.*] Wealth, acquired without use of the joint stock, belongs to the acquirer exclusively, and is not shared by the rest: but, in the instance of the gains of science, such of the brethren as are equally or more learned, participate; and, in the case of wealth acquired with the use of the joint stock, all partake. These and other special rules, set forth under the head of partition among brethren, must be observed also in the case of partition after re-union. S'RÍCRĬSHN'A.

* S'RÍCRĬSHN'A and ACHYUTA.

CHAPTER XIII.

On the distribution of effects concealed.

1. THE distribution of that, which was concealed at the time of partition and is afterwards discovered, shall be now taught. On that subject MENU says, "When all the debts "and wealth have been justly distributed "according to law, any thing, which may "be afterwards discovered, shall be subject to an equal dis-"tribution."*

If effects have been concealed and be discovered, they are subject to distribution, as ordained by MENU.

2. The division of it should be precisely similar to that which had been previously made; and a less share is not to be given, nor no share, to the person who concealed the property, as a punishment of his concealment. Such is the meaning of the sentence "shall be "subject to an equal distribution." Nor is the text intended to enjoin the allotn.ent of equal shares of the property to all the parceners: for there is no reason for prohibiting the deduction in favour of the eldest, and so forth; and it would

2. The second distribution is made on the same principles with the first.

Annotations.

2. *For there is no reason.*] Since the text is significant as obviating a supposition, that the withholder of the effects shall have a smaller share, or none, it is illogical to make it a restriction of the precept for allowing a deduction of a twentieth part and so forth to the eldest, &c. S'RÍCRÍSHN'A.

* MENU, 9. 218.

follow, that brothers belonging, one to the sacerdotal, another to the military, and the rest to other tribes, would have equal shares.

3. A passage of YA'JNYAWALCYA confirms this.

3. Thus YA'JNYAWALCYA says, "Effects, which have "been withheld by one co-heir from another, "and which are discovered after the separa-"tion, let them again divide in equal shares: "this is a settled rule."*

4. CA'TYA'YANA directs what has been ill-distributed, to be divided anew.

4. So CA'TYA'YANA declares [by the close of the following text,†] that a division shall be again made of that which has been distributed in an undue manner. "What has been con-"cealed by one of the co-heirs, and is after-"wards discovered, let the sons, if the father be deceased, "divide equally with their brethren. Effects, which are "withheld by them from each other, and property which "has been ill distributed, being subsequently discovered, "let them divide in equal shares. So BHRIGU has ordained."

5. But a fair distribution is conclusive.

5. But the maxim, "Once is the par-"tition of inheritance made,"‡ relates to the case of a fair distribution.

6. And what has been already justly divided, is not distributed afresh.

6. "Being subsequently discover-ed."] The meaning is, that what has been already divided, is not to be again distributed.

7. CA'TYA'YANA provides, that violence shall not be used to compel restitution of effects

7. So CA'TYA'YANA says, "Effects, which have been "taken by a kinsman, he shall not be com-"pelled by violence to restore: and the "consumption of unseparated kinsmen, they "shall not be required to make good."

Annotations.

Since the sentence, "shall be subject to an equal distribution," is pertinent as grounded on the reasons here stated; it is wrong to make it a restriction of a different text. ACHYUTA.

If a younger brother be the person who withholds the effects, the eldest, though faultless, would have less than his regular share, and the youngest more. This objection is also to be understood. RAGH. on *Dáya-bhága.*

The *Mitácshara*, S'U'LAPA'N'I, CULLU'CA BHAT'T'A and others maintain the doctrine which is here opposed. RAGH. Ibid.

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* YA'JNYAWALCYA, 2. 127. † S'RÍCRÍSHN'A. ‡ MENU, 9. 47.

withheld; nor shall the co-heir make good what he has consumed.

By gentle means, and not by violence, a kinsman shall be made to restore the effects taken by him. But what has been consumed by a co-heir during co-parcenery over and above his due proportion, he shall not be required to make good.

8. An argument against the doctrine, that embezzlement of common property is a theft.

8. In answer to those authors, who contend, that, in this case, as there is the property of another in the common effects, he, who embezzles them, is a thief and of course a sinner; the following argument is propounded: since the received import of the term conveys, that a thief is he, who usurps a right in the property of another, without a title [by gift, sale, or other act of the owner,*] being clearly conscious, that the thing belongs to another; but, in the present case, the person cannot distinguish 'this is mine and that is another's,' for the goods are undivided; therefore, as donation is complete then only, when the owner, conscious that the thing is his, relinquishes it with a view to its becoming the property of another person, and that other person is sensible of his property, apprehending 'this is become mine;' but that cannot occur in respect to common goods, and therefore common property is pronounced unfit to be given; so theft likewise is complete by the consciousness that 'this is not 'mine, but another's:' therefore the crime of theft is not imputable to the act of embezzling what is common.

9. Embezzlement is not theft.

9. But the term embezzlement or withholding *(apaháru)* signifies concealment; and concealment is not exactly theft; for the word theft is in use for an unconcealed taking. Thus CA'TYA'YANA says, "The taking of another's goods, whether "privately or openly, by night or by day, is termed theft." Accordingly [since the concealment of common property is not theft,†] it has been before declared, that the withholder of the goods shall not be compelled by violence to restore them. (§ 7.) But, if it were a theft [in him who withholds common property,‡] then, under the text which directs, that "Having compelled the thief to restore the stolen goods, "the king should smite him by various modes of condign

* S'RÍCRÍSHN'A. † Ibid. ‡ Ibid.

"punishment:"* admitting even that he should be made to restore the goods by gentle means, still the smiting of him would be indispensable.

10. Accordingly the person embezzling has nevertheless his regular share.

10. This two [namely, that such is the definition of theft,†] appears from the sages authorizing the allotment of a share even to the withholder of common property.

11. VIS'WARU'PA'S opinion is consonant to this.

11. Accordingly it is observed by VIS'WARU'PA, 'The 'crime of theft is not here imputable; for 'the recital of the text obviates that sup'position.' His meaning is, because the sense of the verb to steal is not applicable to the case.

12. And so is JITE'NDRIYA'S.

12. Hence also it is remarked by JITE'NDRIYA, in the chapter on expiation and penance, that 'if a 'man seize gold appertaining to another by 'mistake for iron or other matter [of little 'value;] or something which is not gold, mistaking it for this 'substance; or a thing resembling some chattel of his own 'but belonging to another person, by mistake for his own; 'in all these cases there is not a complete seizure [or wilful 'taking of the gold:] for, in these several instances, there 'is not a knowledge of its belonging to another person, 'being such as the thing in fact is.' In like manner, in the present instance also, [viz., in that of common property,‡] the same holds good: for, previous to partition, a discriminative property, referrible to particular persons relatively to particular things, is not perceived. Consequently there is not in this case a complete theft.

Annotations.

12. *Consequently there is not in this case a complete theft.*] RAGHUNANDANA contests this reasoning, without however materially differing as to the result. He says, 'It is the doctrine of JITE'NDRIYA, and of the authors of the '*Dáya-bhága* and *Práyas'chitta-Vivéca*, that, if goods be taken knowing them to 'be another's, the crime of theft is committed; but that crime is not imputable 'to one who uses them by a mistake as to the substance. Their assertion, that

* YAJNYAWALCYA, 2. 268. † ACHYUTA and S'RICRISHN'A. ‡ S'RÍCRISHN'A.

13. Admitting it to be theft, the guilt is not incurred.

13. Or, admitting that it is a theft, the guilt of robbery is not incurred: for the text allows a share even to the person who embezzles the property. Else, in the case of embezzling gold or other valuable effects, the offender, being degraded from his tribe, would have no allotment.

Annotations.

'the appropriation of another's property by mistake for his own is not theft, 'appears unsatisfactory: for it is at variance with the story of NRÍGA in the *Bhágavata*. "A cow, belonging to a certain eminent priest, strayed into my herd "of kine, and being confounded with them, was given by me, ignorant of the "circumstance, to a man of the sacerdotal tribe. The owner, seeing her led "away, claimed her for his own; and the other replied, she is mine by gift; "NRÍGA gave her to me. The priests, contending, addressed me, setting forth "their claims: you are the giver, said the one; the lawless taker, said the other. "Hearing this, I was confounded. For that sin was I transformed into a lizard; "since which time I have seen myself, O prince, in this degraded form."*

'But, if many rings belonging to divers persons be mixed together, it is 'no theft if one sell another's ring by mistake for his own, in consequence of 'their similarity: for they were placed together under the conviction, that, in 'the case of many articles which have no discriminative mark, as cowries or the 'like, belonging to different persons, being intermixed, no offence is committed 'if they be reciprocally used by a sort of barter: else a person would not do so, '[he would not place them together,*] under the apprehension of offence. The 'following passage of the *Matsya purán'a* relates to this case: "The man, who, "through ignorance, makes a sale of another man's chattels, is faultless; but, "wilfully doing so, he merits punishment as a robber." Therefore, the dis'posal of chattels belonging exclusively to another person, without such 'person's consent and with the reflection, "this is mine and shall be disposed of "according to my pleasure," is theft. Sometimes it is mental, being a resolution 'only. In other instances it is corporeal, as an actual gift or sale. But such '[a theft†] cannot happen in the case of the goods of undivided brethren: for it 'cannot be distinctly ascertained "this is mine and that is another's." Accord'ingly [since there is no theft,‡] CA'TYA'YANA says, "Effects which have been "taken, &c." (§ 7.) Here taken [or more literally embezzled] is used meta'phorically.

'Thus also there is no offence in taking a treasure which is found. For 'it is a thing of which the owner is lost.

'There is not similar [innocency*] in the case of associated traders: for 'no text indicates it. On the contrary, it is directed by a passage of YA'JNYA'WALCYA (2. 264), that a fraudulent partner shall be dismissed without profit. 'Traders have not, as in the instance of inherited effects, a property vested in 'several persons relatively to the same chattel. But, by reason of intermixture, 'the property in the goods is uncertain.

* S'RÍBHA'GAVATA, 10. 64. † CA'S'IRA'MA. ‡ Ibid. § Ibid. ‖ ACHYUTA.

14. An objection answered.

14. If it be alleged, that, since there is no text expressly authorizing the allotment of a share to the thief who has embezzled gold to an amount sufficient to cause his degradation from his tribe, the rule for the allotment of a share is presumed to be applicable to the case of theft of other effects: but why may not the law, which forbids the stealing of gold or the like, be the rather considered as relating only to goods appertaining to another, and not common? Still, however, there is no proof or authority on which to ground the selection [of one of these restrictions in preference to the other.] The answer to this alleged objection is as follows: in the legal definition, "the taking of another's goods "is theft,"* "another's" signifies appertaining to a different person to the utter exclusion of any right of his own; for, of two sorts of property, common and several, the notion of several property is most readily presented. Therefore the proposition is similar to that which provides for the previous performance of a sacrifice, [preparatory to the sacrifice with the acid asclepias,†] where an oblation, such as is presented at the full of the moon, intends particularly the offering of a cake of ground rice, as used at the *Agníshóma* [one of the ceremonies performed at that period,] and not the oblation of liquid butter, as practised at the *Upánsu-yága*, for this is common to the *Agníshóma* and to sacrifices bearing other denominations.

15. Accordingly [since it is not theft,‡] there is no

Annotations.

14. *An oblation such as is presented at the full of the moon, intends particularly the offering of a cake of ground rice.*] Two sorts of oblations are commonly used at different sacrifices. One, which is the simplest, consists of clarified butter only; the other, termed *puródásá*, is a cake of ground rice kneaded with hot water into the form of a tortoise and roasted on a specific number of potsherds before one of the consecrated fires; it is then smeared with clarified butter, and presented as a burnt offering in the second consecrated fire.

15. *Accordingly since it is not theft.*] The author has, in this disquisition, relied on the doctrine of those who maintain a general property vested in the co-parceners over the aggregate estate. But, according to his own doctrine of several rights to portions of the estate, it is difficult, even with all this laborious argument, to obviate the inference of theft. S'RÍCRISHN'A.

* CA'TYA'YANA. Vide Supra. § 9. † ACHYUTA. ‡ S'RÍCRISHN'A.

15. BA'LO'CA's concurrence inferred.

censure any where expressed in BA'LO'CA on such a subject [viz., in regard to the taking of common property.*]

16. A remark confuted.

16. It is a remark of BA'LA, that, as in the instance of green and of black kidney beans† in relation to sacrifices, where it might be supposed, that black kidney beans would be a fit substitute when green kidney beans are not procurable, but the use of such beans is prohibited by an express passage of Scripture which declares that black kidney beans are unfit to be employed at sacrifices; so, notwithstanding the taking of that which is, and that which is not, his own, [being common,] is permitted, still the taking of what exclusively is not his own is forbidden: this is puerile; for the definition of theft, as above explained, is not applicable [to the case of embezzlement of common property.‡] It cannot be affirmed, that black kidney beans are unemployed in sacrifices; although ground particles of green beans, intermixed with black beans, be employed: for, in such case, mixed black beans appear to be used at the sacrifice.

17. Conclusion.

17. Thus has partition of effects, concealed by co-parceners from each other, been discussed.

Annotations.

16. *It is a remark of Ba'la.*] In the silence of the commentators, it appears uncertain whether this be the name of an author; and whether the person, noticed in the preceding paragraph under the name of BA'LO'CA, be intended: or whether the meaning be, 'it is the remark of a child *(bála)*;' it is puerile.

As in the instance of green and of black kidney beans.] The author here adverts to the reasoning contained in the *Mímánsá*, 6. 3. 6. Vide *Mitácshara*, C. 1. Sect. 9. § 11.

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* ACHYUTA and S'RÍCRĬSHN'A.

† *Mudga, Phaseolus Mungo,* green kidney beans. *Másha, Phaseolus max. v. radiatus;* black kidney beans.

‡ S'RÍCRĬSHN'A.

CHAPTER XIV.

On the ascertainment of a contested partition.

1. Mode of ascertaining the fact of partition, stated by NA'REDA.

1. THE determination of a doubt, regarding the fact of a partition having been made, is next explained. On that subject NA'REDA says, "If a question arise among co-heirs in "regard to the fact of partition, it must be "ascertained by the evidence of kinsmen, by the re-"cord of the distribution, or by the separate transaction of "affairs."*

2. Exposition of his text. A similar passage of YA'JNYAWALCYA.

2. The mention of kinsmen is intended to show, that, if such be forthcoming, other persons should not be made witnesses. Accordingly [since a recourse to other witnesses is forbidden when kinsmen are forthcoming,†] YA'JNYAWALCYA says, "When partition is denied, "the fact of it may be ascertained by the evidence of "kinsmen, relatives and witnesses, and by written proof; "or by separate possession of house or field."‡

Annotations.

1. *By the record of the distribution.*] ACHYUTA and S'RÍCRÍSHN'A notice a variation in the reading of the text *bhóga-léc'hyéna*, in place of *bhága-léc'hyéna*. Their exposition of that reading is 'by occupancy or by a writing.' In the various quotations of this passage in numerous compilations, no other hint of such a reading has been found: except in BA'LAM-BHAT'T'A's commentary on the *Mitácshará*.

JÍMU'TA-VA'HANA makes subsequent mention (§ 5.) of another unauthorized variation of the text.

* NA'REDA, 13. 37. † S'RÍCRÍSHN'A. ‡ YA'JNYAWALCYA, 2. 150.

3. Order in which the various proofs are admissible.

3. In the first place "kinsmen" or persons allied by community of funeral oblations, are witnesses. On failure of them, relatives, as signified by the term *band'hu.* In default of these, strangers may be witnesses. For, if they were equally admissible, the specific mention of "kinsmen" and "relatives" would be unmeaning; since they are comprehended under the term "witnesses."

4. A passage of S'ANC'HA expounded.

4. Hence also S'ANC'HA says, "Should a doubt arise "on the subject of a partition of the wealth "of kindred, the family may give evi- "dence, if the matter be not known to the "relations sprung from the same race." "Relations sprung "from the same race" are 'kinsmen.' If the matter be not known to them, "the family" or relatives [as the maternal uncles and the rest*] may give evidence: but not a stranger [while a person of the family can bear testimony.†] But, if these also be uninformed, any other person may be a witness.

5. The reading of NA'REDA's text confirmed.

5. Accordingly, kinsmen are stated by NA'REDA (§ 1.) as the chief evidences: and a different reading, *jnyátrìbhih,* 'persons acquainted 'with the matter,' [instead of *jnyátibhih,* 'kinsmen,'] is unfounded.

6. Written evidence in this case come after oral evidence.

6. Next the proof is by written evidence: but written proof is [in general] superior to oral testimony: being so declared [by an express passage of law: "Testimony is better than "presumption; and a writing is better than "oral evidence."‡]

7. Next presumptive proof is admitted; as directed by NA'REDA:

7. In the next place, the proof is by the circumstance of separate transaction of affairs (§ 1.) as it is stated by NA'REDA, "Gift and accept- "ance of gift, cattle, grain, house, land, and "attendants, must be considered as dis- "tinct among separated brethren, as also diet, religious "duties, income and expenditure. Separated, not unsepa- "rated, brethren, may reciprocally bear testimony, become

* *Viramitródaya.* † S'RI'CRISHN'A. ‡ ACHYUTA and [illegible]

"sureties, bestow gifts and accept presents. Those, by "whom such matters are publicly transacted with their "co-heirs, may be known to be separate even without "written evidence."*

8. And by Vrĭhaspati.

8. So Vrĭhaspati: "A violent crime, immovable "property, a deposit, and a previous partition among co-heirs, may be ascertained "by presumptive proof, if there be neither "writing nor witnesses. The exertion of force, a blow, or "the plunder, may be evidence of a violent crime; possession of the land may be proof of property; and separate "wealth is an argument of partition. They, who have their "income, expenditure, and wealth distinct, and have mutual "transactions of money-lending and traffic, are undoubtedly separate."

9. Interpretation of the text.

9. One brother gives and another accepts, or they have separate house and land, or their income and expenditure [of wealth†] and abode are separate; or, when a loan or other affair is transacted by one, another is made witness to it, or becomes surety; or they have mutual transactions of money-lending or the like; or one, having bought certain goods from another person, sells it for traffic to his brother; in these and similar instances, since any such act can only take place among divided brethren, a presumption of partition is deduced from it by the intelligent.

Annotations.

7. *With their co-heirs.*] This is according to the reading of the text, as it is expounded in the *Smrĭti-chandrica.* But copies of Jímu'ta-va'hana exhibit *swa-rict'hatah* "with their own wealth," intead of *swa-rict'héshu* 'with their 'co-heirs,' or *at'ha-rict'hin'ám*, the correspondent reading which occurs in the *Retnácara.* As neither Jímu'ta-va'hana, nor his commentators, explain the passage, it has been thought expedient to follow the reading which preserves the best sense.

8. *Exertion of force, a blow, &c.*] The commentary of S'rícrĭshn'a confirms and explains the reading, as exhibited in Jímu'ta-va'hana's quotation. But, in the *Smrĭti-chandrica*, the text is read and interpreted *culánuband'ha* 'a family feud,' instead of *balánuband'ha* 'an exertion of force,' and *vyághát́a* is expounded 'rivalship' instead of 'mark of a blow.'

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* Na'reda, 13. 38. [illegible] † S'rícrĭshn'a.

10. Any one of the stated proofs is sufficient.

10. It is not to be concluded from the use of the plural number in the phrase "by whom such "matters are transacted" (§ 7.), that the concurrence of all those circumstances is required. For these texts are founded on reason; and the reason is equally applicable in every several instance.

11. Presumptive proof is admitted for want of direct evidence.

11. By saying "if there be neither "writing nor witnesses," (§ 8.) it is intimated, that presumptive proof is to be admitted only in default of written and oral evidence.

Annotations.

11. *By saying "if there be neither writing nor witnesses."*] This remark confirms the reading of the passage, as exhibited in the text. But, in the *Smrĭti-chandrica*, it is read "if there be no witnesses;" *na syur yatra cha sácshinah;* in place of *na syátám patra-sácshinau.*

CHAPTER XV.

Peroration.

1. GRATIFICATION cannot be afforded in this work, to those whose comprehension of the principles of the law of inheritance is impeded by submission to the authority of teachers: but the author's labour has been devoted to reconcile the doctrines of sages whose intellect was governed by evidence [of holy writ.]

2. This treatise, composed by JÍMU'TA-VA'HANA, should be considered as adapted to clear the doubts which arise from the various interpretations of preceding authors.

3. Thus, in the *Dharmaratna*, or gem of the law, composed by the great doctor the fortunate JÍMU'TA-VA'HANA, the *Dáya-Bhága*, or Law of Inheritance, is finished.

Annotations.

1. *The authority of teachers.*] As S'RÍCARA-MIS'RA and the rest. S'RÍCRÍSHN'A.

Sages whose intellect, &c.] ACHYUTA and S'RÍCRÍSHN'A notice another reading of this passage, *manishá-sambádé*, instead of *munínám sambádé.* According to that reading, the sense is "devoted to reconcile the doctrines of "those who attend to proof and demonstration."

FINIS.

THE LAW OF INHERITANCE,

FROM THE

MITÁCSHARÁ,

A COMMENTARY BY VIJNYÁNÉŚWARA ON THE INSTITUTES OF YÁJNYAWALCYA.

CHAPTER I.

SECTION I.

Definition of Inheritance; and of Partition. Disquisition on Property.

1. Subject proposed.

1. EVIDENCE, human and divine, has been thus explained with [its various] distinctions; the partition of heritage is now propounded by the image of holiness.

Annotations.

1. *Evidence, human and divine.*] Intending to expound with great care the chapter on inheritance, the author shows by this verse the connexion of the first and second volumes of the book. *Subód'hiní.*

The image of holiness.] YA'JNYAWALCYA, bearing the title of contemplative saint *(Yógis'wara,)* and here termed the image of holiness *(Yógamurti.)* BA'LAM-BHAT'T'A.

2. Inheritance defined.

2. Here the term heritage *(dáya)* signifies that wealth, which becomes the property of another, solely by reason of relation to the owner.

3. It is lineal, or collaetral.

3. It is of two sorts: unobstructed *(apratiband'ha,)* or liable to obstruction *(sapratiband'ha.)* The wealth of the father or of the paternal grandfather, becomes the property of his sons or of his grandsons, in right of their being his sons or grandsons: and that is an inheritance not liable to obstruction. But property devolves on parents (or uncles,) brothers and the rest, upon the demise of the owner, if there be no male issue: and thus the actual existence of a son and the survival of the owner are impediments to the succession; and, on their ceasing, the property devolves [on the successor] in right of his being uncle or brother. This is an inheritance subject to obstruction. The same holds good in respect of their sons and other [descendants.]

Annotations.

2. *Solely by reason of relation.*] "Solely" excludes any other cause, such as purchase or the like. "Relation," or the relative condition of parent and offspring and so forth, must be understood of that other person, a son or kinsman, with reference to the owner of the wealth. BA'LAM-BHAT'T'A.

The meaning is this. Wealth, which becomes the property of another, (as a son or other person bearing relation,) in right of the relation of offspring and parent or the like, which he bears to his father or other relative who is owner of that wealth, is signified by the term heritage. *Subód'hiní.*

3. *In right of their being his sons or grandsons.*] A son and a grandson have property in the wealth of a father and of a paternal grandfather, without supposition of any other cause but themselves. Theirs consequently is inheritance not subject to obstruction. *Subód'hiní.*

Property devolves on parents, &c.] VIS'WE'S'WARA-BHAT'T'A reads "parents, brothers, and the rest," *(pitrĭ-bhrátrádinám)*, and expounds it 'both parents, as well as brothers and so forth.' BA'LAM-BHAT'T'A writes and interprets 'an uncle and a brother or the like,' *(pitrĭvya-bhrátrádinám;)* but notices the other reading. Both are countenanced by different copies of the text.

The same holds good in respect of their sons, &c.] Here the sons or other descendants of the son and grandson are intended. The meaning is this: if relatives of the owner be forthcoming, the succession of one, whose relation to the owner was immediate, is inheritance not liable to obstruction. but the suc-

4. Partition (*vibhága*) is the adjustment of divers rights regarding the whole, by distributing them on particular portions of the aggregate.

4. Partition defined.

5. Entertaining the same opinion, NA'REDA says, "Where a division of the paternal estate "is instituted by sons, that becomes a topic "of litigation called by the wise partition "of heritage."* "Paternal" here implies any relation, which is a cause of property. "By SONS" indicates propinquity in general.

5. NA'REDA describes this head of actions.

Annotations.

cession of one, whose relation to the owner was mediate or remote, is inheritance subject to obstruction, if immediate relatives exist. *Subód'hiní.*

In respect of their sons, &c.] Meaning sons and other descendants of sons and grandsons, as well as of uncles and the rest. If relatives of the owner be forthcoming, the succession of one, whose relation was immediate, comes under the first sort; or mediate, under the second. BA'LAM-BHAT'T'A.

4. *Partition is the adjustment of divers rights.*] The adjustment, or special allotment severally, of two or more rights, vested in sons or others, relative to the whole undivided estate, by referring or applying those rights to parcels or particular portions of the aggregate, is what the word 'partition' signifies. *Subód'hiní* and BA'LAM-BHAT'T'A.

5. "*Where a division of the paternal estate,*" *&c.*] Considerable variations occur in this text as cited by different authors. It is here read *paitrasya;* and BA'LAM-BHAT'T'A states the etymology of *paitra* signifying 'of or belonging to a father.' He censures the reading in the *Calpataru, pitryasya,* as ungrammatical. It is read in the *Madana-ratna, pitrádéh* 'of a father, &c.' Other variations occur upon other terms of the text: which is here read *tanayaih* for *putraih; calpyaté* for *pracalpyaté;* and *vyavahára-padam* for *tad-viváda-padam.* The last is noticed by the commentator BA'LAM-BHAT'T'A. A disagreement also occurs respecting the pronoun *yatra,* for which some substitute *yas tu,* and others *yat tu.* See JÍMU'TA-VA'HANA, C. 1. § 2.

Paternal here implies, &c.] The meaning, here expressed, is that the word "paternal," as it stands in NA'REDA's text, intends what has been termed [by the author, in his definition of heritage,] 'relation to the owner, a reason of 'property.' *Subód'hiní.*

It intends any relation to the owner, as before mentioned, which becomes a cause of property: and it consequently includes the paternal grandfather and other [predecessors.] The author accordingly observes, 'that "by sons" 'indicates propinquity in general;' meaning any immediate relative. BA'LAM-BHAT'T'A.

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* NA'REDA, 13. 1.

6. Topics included in it.

6. The points to be explained under this [head of inheritance,*] are, at what time, how, and by whom, a partition is to be made, of what. The time, the manner, and the persons, when, in which, and by whom, it may be made, will be explained in the course of interpreting stanzas on those subjects respectively. What that is, of which a partition takes place, is here considered.

What is property?

7. Does it arise from partition, or pre-exist? and is it inferred from spiritual or temporal proof?

7. Does property arise from partition? or does partition of pre-existent property take place? Under this [head of discussion,†] proprietary right is itself necessarily explained: [and the question is] Whether property be deduced from the sacred institutes alone, or from other [and temporal] proof.

8. Property supposed to be spiritual.

8. [It is alleged, that] the inferring of property from the sacred code alone is right, on account of the text of GAUTAMA; "An owner "is by inheritance, purchase, partition,

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Annotations.

7. *Does property arise from partition.*] Here the inquiry is two-fold: for the substance, which is to be divided, is the subject of disquisition; and the doubt is, whether partition be of property, or of what is not property. For the sake of this, another question is considered: Is partition the cause of property, or not? If it be not the cause of property, but birth alone be so; then, since property is by birth, it follows that partition is of property. This is one disquisition, which the author proposes by the question "Does property "arise from partition, &c." Another inquiry relates to the subject of property. The author introduces it, saying "proprietary right is explained." Here the right of property is the subject of discussion: and the doubt is whether it result from the holy institutes only, or be demonstrable by other and temporal proof. That question the author proposes. *Subó'dhini.*

The substance, which is to be divided, is the subject of the first disquisition. Here the question is, whether partition of what is not property, be the cause of proprietary right: and thus right, arising from partition, would not be antecedent to it, since partition, which becomes the cause of that right, had not yet taken place. Or is partition not the reason of property, but birth alone? and thus, since proprietary right thence arose, partition would be of property. This is one disquisition, which the author proposes: "Does property arise, &c." He introduces a second question, which serves towards the solution of the first. BA'LAM-BHAT'T'A.

8. *It is alleged that the inferring of property from the sacred code alone is right.*] The author here states the opponent's argument. *Subód'hiní.*

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* BA'LAM-BHAT'T'A. † Ibid.

"seizure,* or finding.† Acceptance is for a *Brahman'a* an "additional mode; conquest for a *Cshátriya;* gain for a *Vais'ya* "or *S'údra.*"‡ For, if property were deducible from other proof, this text would not be pertinent. So the precept, ("A *Brahman'a,* who seeks to obtain anything, even by "sacrificing or by instructing, from the hand of a man, "who had taken what was not given to him, is considered "precisely as a thief;"§) which directs the punishment of such as obtain valuables, by officiating at religious rites, or by other similar means, from a wrongdoer who has taken what was not given to him, would be irrelevant if property were temporal. Moreover, were property a worldly matter, one could not say, "My property has been "wrongfully taken by him;" for it would belong to the taker. Or, [if it be objected that] the property of another was seized by this man, and it therefore does not become the property of the usurper; [the answer is,] then no doubt could exist, whether it appertain to one or to the other, any more than in regard to the species, whether gold, silver, or the like. Therefore property is a result of holy institutes exclusively.

Annotations.

On account of the text of GAUTAMA.] If property were deducible from other, that is, from temporal proof, this passage of GAUTAMA's Institutes would not be pertinent, since it would be useless if it were a mere repetition of what was otherwise known. BA'LAM-BHAT'T'A.

For it would belong, &c.] The thing would belong to the taker; since that relation would be alone the subject of perception. BA'LAM-BHAT'T'A.

Therefore property is a result of holy institutes exclusively.] If property be worldly, it would follow, that, when the goods of one man have been seized by another, should the person, who has been despoiled, affirm concerning them, "My property has been taken away by this man," a doubt would not, upon hearing that, arise in the minds of the judges, whether it be the property of one, or of the other. As no doubt exists regarding the species, whether gold or something else, when gold, silver, or any other worldly object, is inspected; so none would exist in regard to property, for [according to the supposition] it is a worldly matter. But doubt does arise. Therefore it cannot be affirmed, that the usurper has no property. Or [the meaning may be this] the opponent, who contends that it is not the property of the castor, because that, which has been seized by him, is another's property, must be asked, Is there or is there not,

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* Apprehensio, vel occupatio. † Inventio.

‡ GAUTAMA, 10. 39.—42. Vide Infra. § 13. § MENU, 8. 340.

9. But it is temporal.

9. To this the answer is, property is temporal only, for it effects transactions relative to worldly purposes, just as rice or similar substances do: but the consecrated fire and the like, deducible from the sacred institutes, do not give effect to actions relative to secular purposes. [It is asked] does not a consecrated fire effect the boiling of food; and so, of the rest? [The answer is] No; for it is not as such, that the consecrated flame operates the boiling of food; but as a fire perceptible to the senses: and so, in other cases. But, here, it is not through its visible form, either gold or the like, that the purchase of a thing is effected, but through property only. That, which is not a person's property in a thing, does not give effect to his transfer of it by sale or

Annotations.

proof, that property is not vested in the captor? [The opponent] impeaches the first part of the alternative: "then no doubt could exist, &c." The notion is this; As no doubt arises concerning the species, when there is demonstration that it is gold or silver; so likewise, in the proposed case, no doubt could arise. Nor is the second part of the alternative admissible: for, if no evidence arise, it could not be affirmed, that the captor has not property. Omitting, however, this part of the reasoning, the author closes the adversary's argument, concluding that property is deduced solely from the sacred code. *Subód'hiní* and BA'LAM-BHAT'T'A.

9. *Property is temporal only.*] The author proves his proposition, that property is secular, by logical deduction. Property is worldly for it effects transactions relative to worldly purposes. Whatever does effect temporal ends, is temporal: as rice and other similar substances. Such too is property. Therefore, it is temporal. But whatever is not worldly, promotes not secular purposes: as a consecrated fire and other spiritual matters. *Subód'hiní.*

For it is not as such that the consecrated flame, &c.] A hallowed fire has two characters: the spiritual one of consecration; and the worldly one of combustion. It effects the boiling of food in its worldly capacity as fire; not in its spiritual one as consecrated. For, if it did so in its last-mentioned capacity, a secular fire, wanting the spiritual character of consecration, would not effect the boiling of food. Therefore the objection does not hold. Then, in the proposed case, gold or other valuable would effect the secular purpose of sale and purchase, in its character of gold or the like, not in that of property. The author replies to that objection: "It is not through its visible form, &c." Besides, the use of property is observable among barbarians, to whom the practice enjoined by the sacred institutes is unknown: and, since that cannot be otherwise accounted for, there is evidence of property being secular. *Subód'hiní.*

the like. Besides, the use of property is seen also among inhabitants of barbarous countries, who are unacquainted with the practice directed in the sacred code: for purchase, sale, and similar transactions are remarked among them.

10. This doctrine is confirmed by the *Mímánsá*.

10. Moreover, such as are conversant with the science of reasoning, deem regulated means of acquisition a matter of popular recognition. In the third clause of the *Lipsá sútra*,* the venerable author has stated the adverse opinion, after

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Annotations.

10. *The* lipsá sútra.] The *sútra*, or aphorism, here quoted, is on the desire of acquisition *(lipsa)*, and is the second topic *(ad'hicaran'a)* in the first section *(páda)* of the fourth book *(ad'hyáya)* of aphorisms by JAIMINI, entitled *Mímánsá*. *Subód'hini* and BA'LAM-BHAT'T'A.

In the third clause of the lipsá sútra.] In the first clause *(varn'aca)*, the distinction between religious and personal purposes is examined. In the second, the inquiry is whether the milking of kine and similar preparatives be relative to the person or to the act of religion. In the third, the question examined is whether restrictions, noticed in primeval revelation, as to the means of acquisition, (such as these, 'let a *Brahman'a* acquire wealth by acceptance or the 'like, a *Cshátriya* by victory and so forth, and a *Vais'ya* by agriculture, &c.') must be taken as relative to the person or to the religious ceremony [performed by him.] *Subód'hiní* and BA'LAM-BHAT'T'A.

The position of the adversary is, that, injunctions regarding the means of acquisition concern the religious ceremony, through the medium of the goods used by the agent; for, unless that be admitted, the precept would be nugatory, because there would be no one whom it affected. *Subód'hiní*.

The meaning is this: As in the case of an acquisition of goods under a precept relative to sacrifice, such as this "purchase the moon plant,"† the injunction regarding the acquisition of goods concerns the religious ceremony; so does the injunction respecting acceptance and other means of acquisition. BA'LAM-BHAT'T'A.

The author states an objection to this position of the adversary. The objection is this: the question, considered in the third clause of the *Lipsá-sútrá*, is whether injunctions regarding acquisition of goods concern the religious ceremony or the person. The opponent's position is, that they concern the ceremony. That is not congruous. For, if the injunctions, regarding acquisition of goods, concern the religious ceremony, no property would arise; since property, being spiritual, would have no worldly cause to produce it; and no other means are shown in Scripture; and the injunctions, regarding acquisition, being relative to the ceremony, are not relative to any thing else: thus, for want of property, the religious rites would not be complete with that which was not

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* *Mímánsá*, 4. 1. 2. 3. † SO'MA. Asclepias acida. ROXB.

Statement of the opponent's opinion.

[obviating] an objection to it, that, 'if 'restrictions, relative to the acquisition of 'goods, regard the religious ceremony, there could be no pro-

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Annotations.

property; and consequently the position, that injunctions, regarding acquisition of goods, concern the act of religion, is incongruous. *Subód'hini.*

He revives the position by answering that objection; and the notion is this: the injunctions, regarding acceptance and the like, accomplish property; and they will become relative to the religious ceremony through the medium of goods adapted to the performance of the ceremony: as the husking of grain, which effects the removal of the chaff, concerns the religious ceremony through the medium of clean rice which is adapted to the ceremony. But the wise consider property as a worldly matter [resulting from birth,] like the relation of a son to his father. Consequently there is no failure in the completion of religious rites [as supposed in the objection.]

Admitting, that, because injunctions regarding acquisition concern the religious ceremony, the acquisition likewise must relate to the ceremony; does it not follow, since it relates not to any thing else, that there is no such thing as property? and would not a failure of the religious ceremony ensue? [Wherefore the adversary's position is erroneous.] The author states the objection and confutes it with derision. 'Some one has blundered, affirming that 'acquisition does not produce property, for it is a contradiction in terms.' Such is the construction of the sentence; and the meaning is this: Acquisition, which is an accident of the acquirer, is a relation between two objects [the owner and his own] like that of mother and son. Consequently, there can be no acquisition without a thing to be acquired; and it is a contradicition in terms to say 'acquisition does not produce a proprietary right,' as it is to affirm 'my 'mother is a barren woman.' *Subód'hini* and BA'LAM-BHAT'T'A.

The demonstrated conclusion is, that, since valuables, being intended for every purpose, must be relative to the person, restrictions, regarding the acquisition of them, must concern the person also. BA'LAM-BHAT'T'A.

The purpose of the disquisition under this topic of enquiry is stated. It is interpreted by the venerable author (PRABHA'CARA-GURU.) The implied sense is this. According to the adversary's position, there is no offence affecting the person, in violating the injunction. But the religious ceremony is not duly accomplished with goods acquired by a breach of the injunction. It is the religious ceremony, therefore, which is affected. But, according to the demonstrated doctrine, since the restrictions concern the person, the offence is his, if he infringe the rule; and the religious ceremony is not affected. *Subód'hini.*

The author, by way of closing the argument, states the result as applicable to the subject proposed. It is acknowledged by the maintainer of the right doctrine, that even what is gained by infringing the rule, much more what is acquired by other means, is property. BA'LAM-BHAT'T'A.

Otherwise, that is, if a right of property in wealth acquired even by infringing the rule, be not admitted; then, since no property is temporal because

perty, since proprietary right is not temporal; [by showing, that] 'the efficacy of acceptance and other modes of 'acquisition in constituting proprietary right, is matter of 'popular recognition.' Does it not follow, 'if the mode of acquiring the goods concern the religious ceremony, there is no right of 'property, and consequently no celebration 'of a sacrifice?' [Answer.] 'It is a blunder of any one who affirms, that acquisition does not produce a proprietary right; since this is a contradiction in 'terms.' Accordingly, the author, having again acknowledged property to be a popular notion, when he states the demonstrated doctrine, proceeds to explain the purpose of the disquisition in this manner, 'Therefore a 'breach of the restriction affects the person, 'not the religious ceremony:' and the meaning of this passage is thus expounded,* 'If restrictions, respecting the acquisition of chattels, 'regard the religious ceremony, its celebration would be 'perfect, with such property only, as was acquired consistently with these rules; and not so, if performed with 'wealth obtained by infringing them; and consequently, 'according to the adverse opinion, th[illegible] it would not affect 'the man, if he deviated from the rule: but, according to 'the demonstrated conclusion, since the restriction, regarding acquisitions, affects the person, the performance of 'the religious ceremony is complete, even with property 'acquired by a breach of the rule; and it is an offence on 'the part of a man, because he has violated an obligatory 'rule.' It is consequently acknowledged, that even what is gained by infringing restrictions, is property: because, otherwise, there would be no completion of a religious ceremony.

Objection.

Answer.

The right doctrine asserted.

Purpose of the disquisition explained.

Deduction.

Annotations.

the restrictions concern the religious ceremony [and that, which is thus acquired, does so likewise,] therefore the means of living would be unattainable, since no temporal property could exist; and consequently there could be no religious ceremony, for there would be nobody to perform it. *Subód'hiní* and BA'LAM-BHAT'T'A.

* By the commentator on the *Mímánsá*: PRABHA'CARA surnamed *Guru*.

11. An objection obviated.

11. It should not be alleged, that even what is obtained by robbery and other nefarious means, would be property. For proprietary right in such instances is not recognized by the world; and it disagrees with received practice.

12. Certain means of acquisition are restricted to particular tribes for spiritual reasons.

12. Thus, since property, obtained by acceptance or any other [sufficient] means, is established to be temporal; the acceptance of alms, as well as other [prescribed] modes for a *Bráhman'a*, conquest and similar means for a *Cshátriya*, husbandry and the like for a *Vais'ya*, and service and the rest for a *S'údra*, are propounded as restrictions intended for spiritua purposes; and inheritance and other modes are stated as means common to all. "An "owner is by inheritance, purchase, partition, seizure, or "finding."*

Other means are common to all.

13. Gautama's enumeration of the modes of acquisition expounded.

13. Unobstructed heritage is here denominated "in-"heritance." "Purchase" is well known. "Partition" intends heritage subject to obstruction. "Occupation" or seizure is the appropriation of water, grass, wood and the like, not previously appertaining to any other [person as owner.†] "Finding" is the discovery of a hidden treasure or the like. 'If these reasons exist, the

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Annotations.

11. *It should not be alleged, that even what is obtained by robbery.*] If property be acknowledged in that which is acquired by infringing the restriction, might it not be supposed, that even what is obtained by robbery and other nefarious means, becomes property? The author obviates that objection. It does not become so. He removes the inconsequence of the reason. For the employment of it as such in sale and other transactions is not familiarly seen in practice. BA'LAM-BHAT'T'A.

12. *Thus, since property obtained by acceptance, &c.*] Property being thus proved to be temporal, the author successively refutes the several arguments before cited in support of the notion, that it is not temporal. BA'LAM-BHAT'T'A.

Common to all.] Including even the mixed classes. BA'LAM-BHAT'T'A.

13. *If these reasons exist, the person is owner.*] If such reasons are known [to exist,] the owner is known. *Subód'hini* and BA'LAM-BHAT'T'A.

Both commentaries read *jnyátéshu jnyáyaté swámi*, 'Such reasons existing, 'an owner exists.' But copies of the text exhibit *játéshu jáyaté swámi*, Such 'reasons being known, the owner is known.'

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* GAUTAMA, 10. 39, already cited in § 8. † BA'LAM-BHAT'T'A.

'person is owner.' If they take place, he becomes proprietor. 'For a *Brahman'a*, that, which is obtained by accept-'ance or the like, is additional;' not common [to all the tribes.] "Additional" is understood in the subsequent sentence: 'for a *Cshátriya*, what is obtained by victory, or by amerce-'ment or the like, is peculiar.' In the next sentence, "additional" is again understood: 'what is gained or earned 'by agriculture, keeping of cattle, [traffic,] and so forth, is 'for a *Vais'ya*, peculiar; and so is, for a *S'údra*, that which is 'earned in the form of wages, by obedience to the regenerate 'and by similar means.' Thus likewise, among the various causes of property which are familiar to mankind, whatever has been stated as peculiar to certain mixed classes in the direct or inverse order of the tribes, (as the driving of horses, which is the profession of the *Sútas*,* and so forth,) is indicated by the word "earned" *(nirvisht'a)*: for all such acquisitions assume the form of wages or hire; and the noun *(nirvésa)* is exhibited in the *Tricán'd'í*† as signifying wages.

14. Another objection obviated.

14. As for the precept respecting the succession of the widow and the daughters, &c.,‡ the declaration [of the order of succession,] even in that text is intended to prevent mistake, (although the right of property be a matter familiar to the world,) where many persons might [but for that declaration]

Annotations.

Additional.] The meaning of the term is 'excellent.' BA'LAM-BHAT'T'A.

14. *As for the precept respecting the succession.*] The author obviatesan objection, that, if property be a worldly matter, the import of the text here cited is inconsistent, as it provides by precept, that the widow and certain other persons shall inherit on the owner's demise. *Subód'hini* and BA'LAM-BHAT'T'A.

The declaration of the order of succession.] BA'LAM-BHAT'T'A notices as a variation in the reading, the words here supplied; *crama-smaran'am* 'decla-'ration of the order of succession,' instead of *smaran'am* 'declaration.'

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* According to a text of U's'ANAS, from which these words are taken.

† The dictionary of AMERA SINHA in three books *(Cánd'as.)* The passage here cited occurs in the 3rd book of the *Amera cosha*. Ch. 4. v. 217.

‡ Vide Infra. C. 2 Sect. 1 § 1

be supposed entitled to share the heritage by reason of their affinity to the late owner. The whole is therefore unexceptionable.

15. The argument refuted, on which the first supposition was grounded.

15. As for the remark, that, if property were temporal, it could not be said, "My property has "been taken away by him;"* that is not accurate, for a doubt respecting the proprietary right does arise through a doubt concerning the purchase, or other transaction, which is the cause of that right.

16. Purpose of the disquisition explained.

16. The purpose of the preceding disquisition is this. A text expresses "When *Brahman'as* "have acquired wealth by a blameable act, "they are cleared by the abandonment of "it, with prayer and rigid austerity."† Now, if property be deducible only from sacred ordinances, that, which has been obtained by accepting presents from an improper person, or by other means which are reprobated, would not be property, and consequently would not be partible among sons. But if it be a worldly matter, then even what is obtained by such means, is property, and may be divided among heirs; and the atonement abovementioned regards the acquirer only: but sons have the right by inheritance, and therefore no blame

Property, however acquired, is partible among the heirs of the acquirer.

Annotations.

15. *As for the remark, that if property were temporal.*] The sense is this: in such a case, the proposition 'another's property has been taken by 'him' is simply apprehended from the affirmation of the complainant. But that is apprehension, not proof. Accordingly, if it be contradicted, a doubt arises respecting the cause of right. Thus, if the complainant declare, "My "goods have been taken by him," and the defendant affirm the contrary, a doubt arises in the minds of umpires, whether the thing were unjustly seized by that man, or were fairly obtained by purchase or other title: and so, from a doubt respecting a purchase or other cause of property, arises a doubt concerning property which is the effect. *Subód'hini.*

16. *The purpose of the preceding disquisition is this.*] Admitting property to be a worldly matter; still [its nature] seems to be an unfit [subject of inquiry] under the head of inheritance, since it matters not whether property be temporal or spiritual. Apprehending this objection, the author proceeds to explain the purpose of the disquisition. *Subód'hini.*

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* Vide § 8.

† The text is apparently referred to MENU by the commentator BA'LAM-BHAT'T'A: but it is not found in MENU's Institutes. A passage of similar import does, however, occur. Ch. 10. v. 111.

attaches to them, since MENU declares, "There are seven "virtuous means of acquiring property, viz., inheritance, &c."*

17. The first question (§ 7.) resumed.

17. Next, it is doubted whether property arise from partition, or the division be of an existent right.

18. Property supposed to arise from partition.

18. Of these [positions], that of property arising from partition is right; since a man, to whom a son is born, is enjoined to maintain a holy fire: for, if property were vested by birth alone, the estate would be common to the son as soon as born; and the father would not be competent to maintain a sacrificial fire and perform other religious duties which are accomplished by the use of wealth.

19. The supposition, that it is vested by birth, disagrees with a passage of NA'REDA exempting from partition the father's donations.

19. Likewise the prohibition of a division of that, which is obtained from the liberality of the father previous to separation, would not be pertinent: since no partition of it can be supposed, for it has been given by consent of all parties. But NA'REDA does propound such a prohibition: "Excepting what is "gained by valour, the wealth of a wife, and "what is acquired by science, which are three sorts of pro- "perty exempt from partition; and any favour conferred "by a father."†

Annotations.

18. *Is enjoined to maintain a holy fire.*] For it is ordained by a passage of the *Véda*, that "he, who has a son born and who has black [not grey] hair, "should consecrate a holy fire:" and the meaning of that passage is this; 'one 'who has issue (for the term son implies issue in general;) and whose hair is '[yet] black, or who is in the prime of life; that is, who is capable; one, in 'short, who is qualified; must perform the consecration and maintenance of a 'holy fire.' Does not this relate to the consecration of sacrificial fires, not to the rise of property from partition? Anticipating this objection, he adds "if "property were by birth, &c." The meaning is this: 'if property arose from 'birth alone, a son would, even at the instant of his birth, have ownership; and 'since the goods are thenceforward in common, the father would not be com- 'petent to the consecration of sacrificial fires and other religious acts (as 'funeral repasts, rites on the birth of children, and other indispensable cere- 'monies,) which must be performed by the husband and wife, and which can only be accomplished by expenditure of wealth.' *Subód'hinī* and BA'LAMBHAT'T'A.

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* MENU, 10. 115. † NA'REDA, 13. 6.

20. And with one which recognizes a husband's donations to his wife.

20. So the text concerning an affectionate gift, ("What "has been given by an affectionate husband "to his wife, she may consume as she pleases, "when he is dead, or may give it away, "excepting immovable property;"*) would not be pertinent, if property were vested by birth alone. Nor is it right to connect the words "excepting immovable property" with the terms "what has been given" [in the text last cited;] for that would be a forced construction by connection of disjoined terms.

21. The exception of immovables does not imply property by birth.

Passages, excepting them, regard the ancestral estate.

21. As for the text "The father is master of the "gems, pearls, and corals, and of all [other "movable property:] but neither the "father, nor the grandfather, is so of "the whole immovable estate;"† and this other passage, "By favour of the "father, clothes and ornaments are used, "but immovable property may not be consumed, even with "the father's indulgence;"‡ which passages forbid a gift of

Annotations.

20. *The text . . . . would not be pertinent, if property were vested by birth.*] For, if property were vested at the instant of birth, no such gift could be made; since he would be incompetent even with the consent of the child, and one cannot give away what is common to others. *Subód'hiní* and BA'LAM-BHAT'T'A.

Nor is it right to connect, &c.] Is not the text, so far from being in contradiction to the right by birth, actually founded on it? for the construction is this 'what has been given, excepting immovable property, by an affectionate 'husband to his wife, she may consume as she pleases, when he is dead:' thus, a right of property by birth being true in regard to immovables, since the gift of them is forbidden; and, by analogy, the same being true of other goods, a gift of wealth other than immovables is permitted by the provisions of the law: why then should not this text be propounded? Apprehending that objection, he says, "Nor is it right to connect, &c." The construction stated would be requisite: but it is not a proper one; for the style would be involved, if the construction connect disjoined terms. *Subód'hiní.*

21. *As for the text, "The father is master of the gems, &c."*] Apprehending the objection, that, since a gift of immovables through partial affection is forbidden by the plain construction of two other passages of law, birth and not partition is the cause of property, he obviates it. *Subód'hiní.*

* VISHN'U, according to a subsequent quotation, (§ 25). But NA'REDA cited by JI'MU'TA-VA'HANA (C. 4. Sect. 1. § 23.)

† YA'JNYAWALCYA cited by JI'MU'TA-VA'HANA. (C. 2. § 22.)

‡ The name of the author is not given with any quotation of this text.

immovable property through favour: they both relate to immovables which have descended from the paternal grandfather. When the grandfather dies, his effects become the common property of the father and sons; but it appears from this text alone, that the gems, pearls, and other movables, belong exclusively to the father, while the immovable estate remains common.

22. Property supposed to be by partition, or by demise of the owner.

22. Therefore property is not by birth, but by demise of the owner, or by partition. Accordingly [since the demise of the owner is a cause of property,*] there is no room for supposing, that a stranger could not be prevented from taking the effects because the property was vacant after the death of the father before partition. So likewise, in the case of an only son, the estate becomes the property of the son by the father's decease; and does not require partition.

23. That supposition is wrong. Property is vested by birth: as expressly declared by GAUTAMA.

23. To this the answer is: It has been shown, that property is a matter of popular recognition; and the right of sons and the rest, by birth, is most familiar to the world, as cannot be denied: but the term partition is generally understood to relate to effects belonging to several owners, and does not relate to that which appertains to another, nor to goods vacant or unowned. For the text of GAUTAMA expresses, "Let ownership of wealth be "taken by birth; as the venerable teachers direct."†

24. The passage before cited (§ 21.) does imply property by birth.

24. Moreover, the text above cited, "The father is "master of the gems, pearls, &c." (§ 21.) is pertinent on the supposition of a proprietary right vested by birth. Nor is it right to affirm, that it relates to immovables which

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Annotations.

23. "*Let ownership of wealth, &c.*"] 'By birth alone the heir may take 'the thing which is denominated ownership of wealth: as the venerable 'teachers hold.' *Subód'hiní.*

BA'LAM-BHAT'T'A notices a variation in the reading; *art'ha-swámitwát*, in the ablative case, instead of *art'ha-swámitwam*, in the nominative. That reading is found in the *Dáyatatwa*; and the text is there explained in an entirely different sense. See JÍMU'TA-VA'HANA, C. 1. § 19.

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* *Subód'hiní* and BA'LAM-BHAT'T'A. † [illegible] Institutes [illegible]

have descended from the paternal grandfather: since the text expresses "neither the father, nor the grand-"father." This maxim, that the grandfather's own acquisition should not be given away while a son or grandson is living, indicates a proprietary interest by birth. As, according to the other opinion, the precious stones, pearls, clothes, ornaments, and other effects, though inherited from the grandfather, belong to the father under the special provisions of the law; so, according to our opinion, the father has power, under the same text, to give away such effects, though acquired by his father. There is no difference.

25. Another passage before cited (§ 20.) relates to the father's acquisitions.

25. But the text of VISHN'U (§ 20.), which mentions a gift of immovables bestowed through affection, must be interpreted as relating to property acquired by the father himself and given with the consent of his son and the rest: for, by the passages [above cited, as well as others not quoted,* viz.] "The father is master "of the gems, pearls, &c.," (§ 21.), the fitness of any other but immovables for an affectionate gift was certain.

26. A preceding objection (§ 18.) refuted.

26. As for the alleged disqualification for religious duties which are prescribed by the *Véda*, and which require for their accomplishment the use of wealth, (§ 18.) sufficient power for such purposes is inferred from the cogency of the precept [which enjoins their performance.]

27. Property is by birth: but the father has power over movables;

27. Therefore it is a settled point, that property in the paternal or ancestral estate is by birth, [although†] the father have independent power in the disposal of effects other than immovables, for indispensable acts of duty and for purposes prescribed by texts of law, as gifts through affection, support of the

Annotations.

27. "*No gift or sale should be made.*"] The close of the passage is read otherwise by RAGHUNANDANA: "The dissipating of the means of support is cen-"sured" *vritti-lópó vigarhitah*, instead of *na dánan na cha vicrayah*.

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* [illegible] † Ibid.

and is controlled in respect of immovables: as shown by passages of law.

family, relief from distress, and so forth: but he is subject to the control of his sons and the rest, in regard to the immovable estate, whether acquired by himself or inherited from his father or other predecessor; since it is ordained, "Though immovables or bipeds have been acquir-"ed by a man himself, a gift or sale of them should not be "made without convening all the sons. They, who are "born, and they who are yet unbegotten, and they who are "still in the womb, require the means of support, no gift or "sale should, therefore, be made."*

28. A further text authorizes sale, &c., by a single owner.

28. An exception to it follows: "Even a single "individual may conclude a donation, mort-"gage, or sale, of immovable property, dur-"ing a season of distress, for the sake of the "family, and especially for pious purposes."†

29. Explanation of the text.

29. The meaning of that text is this: while the sons and grandsons are minors, and incapable of giving their consent to a gift and the like; or while brothers are so and continue unseparated; even one person, who is capable, may conclude a gift, hypothecation, or sale, of immovable property, if a calamity affecting the whole family require it, or the support of the family render it necessary, or indispensable duties, such as the obsequies of the father or the like, make it unavoidable.

30. Another passage expounded.

30. The following passage, "Separated kinsmen, as "those who are unseparated, are equal in "respect of immovables; for one has not "power over the whole, to make a gift, sale, "or mortgage;"‡ must be thus interpreted: 'among un-'separated kinsmen, the consent of all is indispensably 'requisite, because no one is fully empowered to make an 'alienation, since the estate is in common:' but, among

Consent of separated kinsmen tends to the facility of the transaction;

separated kindred, the consent of all tends to the facility of the transaction, by obviating any future doubt, whether they be separate or united: it is not required, on account of any want of sufficient power, in the single owner; and the transaction is consequently valid even without the consent of separated kinsmen.

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* VYA'SA, as cited in other compilations.

† VRIHASPATI, as cited in the *Retnácara*, &c. ‡ Ibid.

31. Like the consent of townsmen, &c., required by another text.

31. In the text, which expresses, that "Land passes "by six formalities; by consent of townsmen, "of kinsmen, of neighbours, and of heirs, and "by gift of gold and of water;"* consent of townsmen is required for the publicity of the transaction, since it is provided, that "Acceptance of a "gift, especially of land, should be public;"† but the contract is not invalid without their consent. The approbation of neighbours serves to obviate any dispute concerning the boundary. The use of the consent of kinsmen and of heirs has been explained.

32. Gift of gold and water assimilates the sale to a gift of land.

32. By gift of gold and of water.] Since the sale of immovables is forbidden ("In regard to "the immovable estate, sale is not allowed; "it may be mortgaged by consent of parties "interested;"‡) and since donation is praised ("Both he who accepts land, and he who gives it, are per-"formers of a holy deed, and shall go to a region of bliss;"§ if a sale must be made, it should be conducted, for the transfer of immovable property, in the form of a gift, delivering with it gold and water [to ratify the donation.]

33. A distinction regarding the right by birth will be noticed. (Sect. 5. § 3.)

33. In respect of the right by birth, to the estate paternal or ancestral, we shall mention a distinction under a subsequent text. (Sect. 5. § 3.)

SECTION II.

Partition equable or unequal.—Four periods of partition.—Provision for Wives.—Exclusion of a Son who has a competence.

1. Other topics resumed.
Text of YA'JNYAWALCYA.

1. AT what time, by whom, and how, partition may be made, will be next considered. Explaining those points, the author says, "When the father makes a partition, let "him separate his sons [from himself] at his

* The author of this passage is not named. † This passage also is anonymous.
‡ The origin of this quotation likewise has not been found. § *Brahme-vaiverta-purána.*

"pleasure, and either [dismiss] the eldest with the best share, "or [if he choose] all may be equal sharers."*

2. When a father wishes to make a partition, he may at his pleasure separate his children from himself, whether one, two, or more sons.

2. Exposition of the passage.

3. No rule being suggested (for the will is unrestrained,) the author adds, by way of restriction, "he may separate (for this term is again "understood) the eldest with the best share," the middlemost with a middle share, and the youngest with the worst share.

3. Distribution by the father may be unequal.

4. This distribution of best and other portions is propounded by MENU. "The portion de-"ducted for the eldest is the twentieth part "of the heritage, with the best of all the "chattels; for the middlemost, half of that; for the "youngest, a quarter of it."†

4. MENU describes this distribution.

5. The term "either" (§ 1.) is relative to the subsequent alternative "or all may be equal "sharers." That is, all, namely, the eldest and the rest, should be made partakers of equal portions.

5. Explanation of the close of the former text.

6. This unequal distribution supposes property by himself acquired. But, if the wealth descended to him from his father, an unequal partition at his pleasure is not proper: for equal ownership will be declared.

6. The estate must have been acquired by him: else the rights are equal.

7. One period of partition is when the father desires separation, as expressed in the text, "When "the father makes a partition." (§ 1.) Another period is while the father lives, but is indifferent to wealth and disinclined to pleasure,

7. Four periods of partition: 1st, by the father's desire;

Annotations.

2. *Separate his children.*] Make them distinct and several by giving to them shares of the inheritance. BA'LAM-BHAT'T'A.

7. *One period of partition is when the father desires separation.*] There are four periods of partition. One is, while the father lives, if he desire partition. Another is, when the mother ceases to be capable of bearing issue, and the father is not desirous of sexual intercourse and is indifferent to wealth; if his sons then

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* YA'JNYAWALCYA, 2. 115. † MENU, 9. 112. Vide Infra. Sect. 3. § 3.

and the mother is incapable of bearing more sons; at which time a partition is admissible, at the option of sons, against the father's wish: as is shown by NA'REDA, who premises partition subsequent to the demise of both parents ("Let sons regularly divide the wealth when the father is "dead;"*) and adds, "Or when the mother is past child-"bearing and the sisters are married, or when the father's "sensual passions are extinguished."† Here the words "let sons regularly divide the wealth," are understood. GAUTAMA likewise, having said, "After the demise of the "father, let sons share his estate;"‡ states a second period, "Or when the mother is past child-bearing;"§ and a third, "While the father lives, if he desire separation."‖ So, while the mother is capable of bearing more issue, a partition is admissible by the choice of the sons, though

2nd, on his retiring from worldly affairs: as is shown by NA'REDA.

Annotations.

require partition, though he do not wish it. Again, another period is while the mother is yet capable of bearing issue, and the father, though not consenting to partition, is old, or addicted to vicious courses, or afflicted with an incurable disease; if the sons then desire partition. The last period is, after the decease of the father. VIS'WE'S'WARA in the *Madana-Párijáta.*

There are four periods of partition in the case of wealth acquired by the father. VIS'WE'S'WARA in the *Subód'hini.*

Four periods of partition among sons have been stated by the author (VIJNYA'NE'S'WARA,) which are compendiously exhibited in a two-fold division by the contemplative saint (YA'JNYAWALCYA.) Here, three cases may occur under that of distribution during the life of the father: viz., with, or without, his desire for separation: the case of his not desiring it being also two-fold; viz., 1st, when the mother has ceased to be capable of bearing children and the father is disinclined to pleasure, &c. 2nd, when the mother is not incapable of bearing issue, but the father is disqualified by vicious habits or the like. *Subód'hini.*

The doctrine of the eastern writers [JÍMU'TA-VA'HANA, &c.] who maintain, that two periods only are admissible, the volition of the father and his demise, and not any third period;¶ and that the text, relative to the mother's incapacity for bearing more issue, regards the estate of the paternal grandfather or other ancestor, is refuted. BA'LAM-BHAT'T'A.

We hold, that while the father survives and is worthy of retaining uncontrolled power, his will alone is the cause of partition. If he be unworthy of

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* NA'REDA, 13. 2. † Ibid, 13. 3. ‡ GAUTAMA, 28. 1.
§ Ibid, 28. 2. ‖ Ibid, 28. 2. ¶ See JIMU'TA-VA'HANA, C. 1. § 44.

the father be unwilling, if he be addicted to vice or afflicted with a lasting disease. That S'ANC'HA declares: "Partition of inheritance takes "place without the father's wish, if he be "old, disturbed in intellect, or diseased."*

4th, on account of his disqualification: as stated by S'ANC'HA.

8. Two sorts of partition at the pleasure of the father have been stated; namely, equal and unequal. The author adds a particular rule in the case of equal partition; "If he make "the allotments equal, his wives, to whom "no separate property has been given by the husband or "the father-in-law, must be rendered partakers of like por- "tions."†

8. Provision for wives.

Text of YA'JNYAWALCYA.

9. When the father, by his own choice, makes all his sons partakers of equal portions, his wives, to whom peculiar property had not been given by their husband or by their father-in-law, must be made participant of shares equal to those of sons. But, if separate property have been given to a woman, the author subsequently directs half a share to be allotted to her: "Or if any had been given, let him assign the half."‡

9. Exposition of it.

The wife shares like a son.

Annotations.

such power, in consequence of degradation, or of retirement from the world, or the like, the son's will is likewise a cause of partition. But, in the case of his demise, the successor's own choice is, of course, the reason. By this mode, the periods are three. Else there must be great confusion, in the uncertainty of subject and accident, if many reasons, as extinction of worldly propensities and so forth, must be established collectively and alternatively. Thus the mention of certain reasons in some texts, and the omission of them in others, are suitable: for the extinction of the temporal affections, and the other assigned reasons, indicate the single circumstance of the father's want of uncontroled power; since it is easy to establish that single foundation of the texts. *Víramitródaya.*

When the father's passions are extinguished.] JÍMU'TA-VA'HANA's reading of the passage is different: and there are other variations of this text. See note on JÍMU'TA-VA'HANA. Ch. 1. § 33.

Partition of inheritance takes place without the father's wish.] A text of a contrary import is cited from the same author, by JÍMU'TA-VA'HANA. See note on JÍMU'TA-VA'HANA. C. 1. § 43.

9. *The author subsequently directs half a share.*] This and the passage cited may be supposed to bear reference to a passage which occurs near the close of the head of inheritance (C. 2. Sect. 11. § 34): but the quotation is not exact, and the text relates to a different subject.

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* Cited as a passage of HA'RITA in the *Vyavahára mayúc'ha.*

† YA'JNYAWALCYA, 2. 116.

‡ Vide Infra. C. 2. Sect. 11. § 34.

10. Excepting the deductions for the first born, &c.
But she takes her ornaments and the household furniture.

10. But, if he give the superior allotment to the eldest son, and distribute similar unequal shares to the rest, his wives do not take such portions, but receive equal shares of the aggregate from which the son's deductions have been subtracted, besides their own appropriate deductions specified by A'PASTAMBA : 'The furniture in the house and her ornaments are the wife's, '[property]."*

11. A trifle may be given to a son who needs not a full share.
Text of YA'JNYAWALCYA.

11. To the alternative before stated (§ 1.) the author propounds an exception: "The separation of one, who is able to support himself and is not desirous of participation, may be completed by giving him "some trifle."†

12. Interpretation of the text.

12. To one who is himself able to earn wealth, and who is not desirous of sharing his father's goods, any thing whatsoever, though not valuable, may be given, and the separation or division may be thus completed by the father ; so that the children, or other heirs, of that son, may have no future claim of inheritance.

13. An illegally partial distribution is improper.
Text of YA'JNYAWALCYA.

13. The distribution of greater and less shares has been shown (§ 1.) To forbid, in such case, an unequal partition made in any other mode than that which renders the distribution uneven by means of deductions, such as are directed by the law, the author adds, "A "legal distribution, made by the father among sons separat-"ed with greater or less shares, is pronounced valid."‡

14. Explanation of the passage.

14. When the distribution of more or less among sons separated by an unequal partition is legal, or such as ordained by the law ; then that division, made by the father, is com-

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Annotations.

10. *The furniture in the house, &c.*] The chairs, and the earthern and stone utensils, and the ornaments worn by her, are the wife's deducted allotment HARADATTA§ says the furniture, as well as the car, is the father's; and the ornaments are the wife's. BA'LAM-BHAT'T'A.

13. *In any other mode.*] The commentator BA'LAM-BHAT'T'A prefers another reading, *ayat'hás'ástra,* 'not according to law,' instead of *anyat'há* 'in any other mode.'

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* Vide Infra. Sect. 3. § 6.
† YA'JNYAWALCYA, 2. 117.
‡ Ibid.
§ The scholiast of GAUTAMA.

pletely made, and cannot be afterwards set aside: as is declared by MENU and the rest. Else it fails, though made by the father. Such is the meaning; and in like manner, NA'REDA declares, "A father, "who is afflicted with disease, or influenced "by wrath, or whose mind is engrossed by a beloved "object, or who acts otherwise than the law permits, has no "power in the distribution of the estate."*

Confirmed by a quotation from NA'REDA.

SECTION III.

Partition after the Father's decease.

1. THE author next propounds another period of partition, other persons as making it, and a rule respecting the mode. "Let sons "divide equally both the effects and the "debts, after [the demise of] their two "parents."†

1. Distribution among brothers should be equable; by the text of YA'JNYAWALCYA.

2. After their two parents.] After the demise of the father and mother: here the period of the distribution is shown. The sons.] The persons, who make the distribution, are thus indicated. Equably.] A rule respecting the mode is by this declared: in equal shares only should they divide the effects and debts.

2. Interpretation of the passage.

3. But MENU, having premised "partition after the "death of the father and the mother,"‡ and having declared, "The eldest brother may "take the patrimony entire, and the rest may "live under him as under their father;"§ has exhibited a distribution with deductions, among brethren separating after the death of their father and mother: "The portion deducted for the eldest is the "twentieth part of the heritage with the best of all the chat-"tels; for the middlemost, half of that; for the youngest, a

3. Objection to the restriction of equal shares; since an unequal division is authorized by MENU.

* NA'REDA, 13. 16. † YA'JNYAWALCYA, 2. 118. ‡ MENU, 9. 104 § Ibid. 9. 105.

quarter of it."* The twentieth part of the whole amount of the property [to be divided,†] and the best of all the chattels, must be given [by way of deduction‡] to the eldest; half of that, or a fortieth part, and a middling chattel, should be allotted to the middlemost; and a quarter of it, or the eightieth part, with the worst chattel, to the youngest. He has also directed an unequal partition, but without deductions, among brethren separating after their parents' decease; allotting two shares to the eldest, one and a half to the next born, and one apiece to the younger brothers: "If a deduction be thus made, let equal shares of the residue be allotted: but, if there be no deduction, the shares must be distributed in this manner; let the eldest have double share, and the next born a share and a half, and the younger sons each a share: thus is the law settled."§ The author himself|| has sanctioned an unequal distribution when a division is made during the father's life-time ("Let him either dismiss the eldest with the best share, &c."¶) Hence an unequal partition is admissible in every period. How then is a restriction introduced, requiring that sons should divide only equal shares?

4. Answer.

4. The question is thus answered: True, this unequal partition is found in the sacred ordinances; but it must not be practised, because it is abhorred by the world; since that is forbidden by the maxim, "Practice not "that which is legal, but is abhorred by "the world, [for**] it secures not celestial "bliss:"†† as the practice [of offering bulls] is shunned, on account of popular prejudice, notwithstanding the injunction, "Offer to a venerable priest a bull or a large goat;"‡‡ and as the slay-

Unequal distribution is disused through popular prejudice; like the slaughter of kine.

Annotations.

4. *As the slaying of a cow is for the same reason disused.*] This is a very remarkable admission of the former prevalence of a practice, which is now held in the greatest abhorrence.

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* MENU, 9. 112. † BA'LAM-BHAT'T'A. ‡ Ibid. § MENU, 9. 116—117. || YA'JNYAWALCYA. ¶ Vide Sect. 2. § 1. ** *Subód'hiní* and BA'LAM-BHAT'T'A.

†† A passage of YA'JNYAWALCYA, according to the quotation of MITRA MIS'RA in the *Viramitródaya;* but ascribed to MENU in BA'LAM-BHAT'T'A's commentary. It has not, however, been found either in MENU's or in YA'JNYAWALCYA's Institutes.

‡‡ This also is a passage of YA'JNYAWALCYA, according to MITRA MIS'RA's quotation, but has not been found in the Institutes of that author

ing of a cow is for the same reason disused, notwithstanding the precept, "Slay a barren cow as a victim consecrated to "MITRA and VARUN'A."*

5. It is declared obsolete in a passage of law.

5. It is expressly declared, "As the duty of an appointment [to raise up seed to another,] "and as the slaying of a cow for a victim, "are disused, so is partition with deductions "[in favour of elder brothers.]"†

6. A'PASTAMBA, after describing an unequal partition, cites a passage of the *Véda*, which implies an equal distribution only.

6. A'PASTAMBA, also, having delivered his own opinion, "A father, making a partition in his lifetime, should distribute the heritage equally "among his sons;" and having stated, as the doctrine of some, the eldest's succession to the whole estate ("Some hold, that the "eldest is heir;") and having exhibited, as the notion of others, a distribution with deductions ("In "some countries, the gold, the black kine, and the black produce of the earth, belong to the eldest son; the car appertains to the father; and the furniture in the house and her "ornaments are the wife's;‡ as also the property [received "by her] from kinsmen: so some maintain;") has expressly forbid it as contrary to the law; and has himself explained its inconsistency with the sacred codes: "It is recorded in "Scripture, without distinction, that MENU *distributed his* "*heritage among his sons.*"§

Annotations.

5. *The duty of an appointment.*] So the term (*niyóga-d'herma*) is here interpreted by the author of the *Viramitródaya*. But it is explained in the *Subód'hiní*, as intending the injunction of an observance, such as the offering of a bull, &c.

6. *In some countries, the gold, &c.*] The sense of the text is this: In certain countries, the gold, the black kine, the black produce of earth, as *Másha*|| and other dark-coloured grain, or as black iron, (for so some interpret the word;) appertain to the eldest son; the car, and the furniture in the house, or utensils such as stools and the like, belong to the father;¶ the jewels worn by her are the wife's, as well as property which she has received from the father and other kinsmen. Such respectively are the portions of the eldest son, of the father, and of his wife. *Subód'hiní*; and HARADATTA cited by BA'LAM-BHAT'T'A.

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* A passage of the *Véda*, as the preceding one is of the *Smriti*, according to the remark of the *Subód'hiní* and BA'LAM-BHAT'T'A.

† *Smriti-sangraha* as cited in the *Viramitródaya*.

‡ Vide Supra. Sect. 2. § 10.

§ A passage of the *Taittiriya Véda*, cited by A'PASTAMBA; as here remarked by BA'LAM-BHAT'T'A.

|| Phaseolus radiatus.

¶ See a different interpretation. Sect. 2. § 10.

7. Unequal division should not be practised.

7. Therefore, unequal partition, though noticed in codes of law, should not be practised, since it is disapproved by the world and is contrary to Scripture. For this reason, a restriction is ordained, that brethren should divide only in equal shares.

8. The mother's peculiar property goes to her daughters.

8. It has been declared, that sons may part the effects after the death of their father and mother. The author states an exception in regard to the mother's separate property ; "The "daughters share the residue of their "mother's property, after payment of her debts."*

9. Exposition of YA'JNYAWALCYA's text.

9. Let the daughters divide their mother's effects remaining over and above the debts ; that is, the residue after the discharge of the debts contracted by the mother. Hence, the purport of the preceding part of the text is, that sons may divide their mother's effects, which are equal to her debts or less than their amount.

10. Sons, not daughters, are to discharge the mother's debts : but her wealth goes to her daughters, as the father's devolves on the sons.

10. The meaning is this: A debt, incurred by the mother, must be discharged by her sons, not by her daughters; but her daughters shall take her property remaining above her debts: and this is fit; for by the maxim, "A male child is procreated if "the seed predominate, but a female if the "woman contribute most to the fœtus;" the woman's property goes to her daughters, because portions

Annotations.

Among his sons.] BA'LAM-BHAT'T'A reads *putrén'a* "son" in the singular; but all copies of the *Mitácshara* and *Subód'hiní*, which have been collated, exhibit the term in the plural (*putrébhyah*, "sons;") and so does the *Víramitródaya*, quoting this passage from the *Mitácshara*.

8. *Sons may divide their mother's effects, which are equal to her debts or less.*] They may take the goods and must pay the debts. BA'LAM-BHAT'T'A.

* YA'JNYAWALCYA 2. 118.

of her abound in her female children ; and the father's estate goes to his sons, because portions of him abound in his male children.

11. It goes first to unmarried or unprovided daughters.

11. On the subject [of daughters*] a special rule is propounded by GAUTAMA : "A woman's "property goes to her daughters, unmarried, "or unprovided."† His meaning is this : if there be competition of married and unmarried daughters, the woman's separate property belongs to such of them as are unmarried ; or, among the married, if there be competition of endowed and unendowed daughters, it belongs exclusively to such as are unendowed : and this term signifies 'destitute of wealth.'

12. On failure of daughters, it goes to her sons.

12. In answer to the question, who takes the residue of the mother's goods, after payment of her debts, if there be no daughter? the author adds, "And the issue succeeds in "their default."‡

13. Interpretation of the text of YA'JNYAWALCYA.

13. On failure of daughters, that is, if there be none, the son, or other male offspring, shall take the goods. This, which was right under the first part of the text, ("Let sons divide "equally both the effects and the debts ;"§) is here expressly declared for the sake of greater perspicuity.

Annotations

11. *Unmarried or unprovided.*] The text is explained otherwise by JÍMU'TA-VA'HANA, (C. 4. Sect 2. § 13. and 23.)

Married and unmarried.] Married signifies espoused ; unmarried, maiden. *Subód'hiní.*

Endowed and unendowed.] Endowed signifies supplied with wealth ; unendowed, unfurnished with property. BA'LAM-BHAT'T'A.

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* BA'LAM-BHAT'T'A. † GAUTAMA, 28. 22. ‡ YA'JNYAWALCYA, 2. 118. § Vide § 1.

SECTION IV.

Effects not liable to Partition.

1. Certain acquisitions are exempt from partition.

1. The author explains what may not be divided, "Whatever else is acquired by the co-"parcener himself, without detriment to "the father's estate, as a present from a "friend, or a gift at nuptials, does not ap-"pertain to the co-heirs. Nor shall he, who recovers here-"ditary property, which had been taken away, give it up to "the parceners: nor what has been gained by science."*

2. Exposition of YA'JNYAWALCYA'S text.

2. That, which had been acquired by the co-parcener himself without any detriment to the goods of his father or mother; or which has been received by him from a friend, or obtained by marriage, shall not appertain to the co-heirs or brethren. Any property, which had descended in succession from ancestors, and had been seized by others, and remained unrecovered by the father and the rest through inability or for any other cause, he, among the sons, who recovers it with the acquiescence of the rest, shall not give up to the brethren or other co-heirs: the person recovering it shall take such property.

3. S'ANC'HA directs, that if land be recovered by one co-heir, he shall have a quarter of it.

3. If it be land, he takes the fourth part, and the remainder is equally shared among all the brethren. So S'ANC'HA ordains, "Land, [in-"herited] in regular succession, but which "had been formerly lost and which a single "[heir] shall recover solely by his own "labour, the rest may divide according to their due allot-"ments, having first given him a fourth part."

* YA'JNYAWALCYA, 2. 119.-120.

4. A word supplied in the text.

4. In regular succession.] Here the word "inherited" must be understood.

5. The close of the passage of YA'JNYAWALCYA (§ 1.) explained.

5. He need not give up to the co-heirs, what has been gained by him, through science, by reading the Scriptures or by expounding their meaning: the acquirer shall retain such gains.

6. The acquisition must have been made without charge to the patrimony.

6. Here the phrase "any thing acquired by himself, "without detriment to the father's estate," must be every where understood: and it is thus connected with each member of the sentence; what is obtained from a friend, without detriment to the paternal estate; what is received in marriage, without waste of the patrimony; what is redeemed, of the hereditary estate, without expenditure of ancestral property; what is gained by science, without use of the father's goods. Consequently, what is obtained from a friend, as the return of an obligation conferred at the charge of the patrimony; what is received at a marriage concluded in the form termed *A'sura*, or the like; what is recovered, of the hereditary estate, by the expenditure of the father's goods; what is earned by science acquired at the expense of ancestral wealth; all that must be shared with the whole of the brethren and with the father.

7. And acquisitions so made, but

7. Thus, since the phrase "without detriment to the "father's estate" is in every place understood; what is obtained by simple accept-

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Annotations.

4. *Inherited must be understood.*] The author supplies the deficiency in the text cited by him. The words in "succession" are in the text; "inherited" must be understood to complete the sense. *Subód'hini.*

6. *Any thing acquired by himself.*] Here, according to BA'LAM-BHAT'T'A's remark, either a different reading is proposed *(cinchit* for *anyat,)* or an interpretation of the words of the text, "Whatever else *(anyat)*" being explained by *(cinchit)* 'any thing.'

It is connected with every other member of the sentence.] More is implied: for the same phrase is understood in every instance, stated in other codes, of acquisitions exempt from partition. *Subód'hini.*

In the form termed A'sura.] For, at such a marriage, wealth is received from the bridegroom by the father or kinsmen of the bride. See MENU, 3. 31.

7. *Thus since the phrase, &c.*] A different reading is noticed by BA'LAM-BHAT'T'A, "not thus;" *na tat'há* instead of "thus" *tat'ha.* It is taken as a

not included in the enumerated sorts, are divisible.

ance, without waste of the patrimony, is liable to partition. But, if that were not understood with every member of the text, presents from a friend, a dowry received at a marriage, and other particular acquisitions, need not have been specified.

8. An objection refuted.

8. But, it is alleged, the enumeration of amicable gifts and similar acquisitions is pertinent, as showing, that such gains are exempt from partition, though obtained at the expense of the patrimony. Were it so, this would be inconsistent with the received practice of unerring persons, and would contradict a passage of

Passage of NA'REDA and CA'TYA'YANA, on the gains of science.

NA'REDA: "He, who maintains the family "of a brother studying science, shall take, "be he ever so ignorant, a share of the wealth gained by "science."* Moreover, the definition of wealth, not partici-

Annotations.

distinct sentence; and is explained as intimating, that, on the other hand, amicable gifts and the like, acquired without detriment to the patrimony, are not liable to partition. According to this reading and interpretation, that short sentence belongs to the preceding paragraph.

In the following sentence there seems to be another difference of reading, in the phrase "without waste (or with waste) of the patrimony." But the reading, which is countenanced by the exposition given in the *Subód'hini*, has been preferred.

Since the phrase "without detriment to the father's estate."] Since that portion of the text is applicable to amicable gifts and other acquisitions which are specified as exempt from partition, therefore, as those acquisitions made at the charge of the patrimony are liable to be shared, so any thing obtained by mere acceptance, not being included among such acquisitions, must be subject to partition, though procured without use of the paternal goods. *Subód'hini.*

8. *As showing that such gains are exempt from partition.*] A difference in the reading of this passage, *bhájyatwát* (in the ablative case) instead of *bhajyatwáya* (in the dative), is mentioned by BA'LAM-BHAT'T'A; but he makes no difference in the interpretation.

Would contradict a passage of NA'REDA.] Since the support of the family is here stated as a reason for partaking of the property, the right of participation in the gains of science is founded on a special cause; and is not a natural consequence of relation as a brother: and the gains of science are not naturally liable to partition, and are therefore mentioned as excepted from distribution.

* NA'REDA. 13. 10.

pable, which is gained by learning, is so propounded by CA'TYA'YANA: "Wealth, gained through science which was acquired "from a stranger while receiving a foreign maintenance, is "termed acquisition through learning."

9. It is a condition in the exemption, that the gain be without loss to the patrimony.

9. Thus, if the phrase "without detri-"ment to the father's estate," be taken as a separate sentence, any thing obtained by mere acceptance would be exempt from partition, contrary to established practice.

10. This is corroborated by a passage of MENU.

10. This [condition, that the acquisition be without detriment to the patrimony,*] is made evident by MENU: "What a brother has "acquired by his labour, without using the "patrimony, he need not give up to the co-heirs; nor what "has been gained by science."†

11. Exposition of the text.

11. By labour.] By science, war, or the like.

12. An objection stated.

12. Is it not unnecessary to declare, that effects obtained as presents from friends, and other similar acquisitions made without using the patrimony, are exempt from partition: since there was no ground for supposing a partition of them? That what is acquired, belongs to the acquirer, and to no other person, is well known: but a denial implies the possible supposition of the contrary.

13. An erroneous solution of it quoted.

13. Here a certain writer thus states grounds for supposing a partition. By interpreting the text, "After the death of the father, if the "eldest brother acquire any wealth, a share "of that belongs to the younger brothers; provided they "have duly cultivated science;"‡ in this manner, 'if the 'eldest, youngest, or middlemost, acquire property before 'or after the death of the father, a share shall accrue 'to the rest, whether younger or elder;' grounds do exist for supposing friendly presents and the like to be liable to partition, whether or not the father be living: that is accordingly denied.

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* *Subód'hinì.*

† MENU, 9. 208. The close of this passage is read differently by CULLU'CA-BHAT'T'A, JÍMU'TA-VA'HANA, &c. See JÍMU'TA-VA'HANA, Ch. 6. Sect. 1. § 3.

‡ MENU, 9. 204.

14. The argument is erroneous : since there is not here a denial of what might be supposed ; but the text is a recital of that which was demonstratively true : for most texts, cited under this head, are mere recitals of that which is notorious to the world.

14. Refutation of it, and solution of the difficulty.

15. Or you may be satisfied with considering it as an exception to what is suggested by another passage, "All the brethren shall be equal "sharers of that which is acquired by them "in concert:"* and it is therefore a mere error to deduce the suggestion from an indefinite import of the word "eldest" in the text before cited (§ 13). That passage must be interpreted as an exception to the general doctrine, deduced from texts concerning friendly gifts and the rest, that they are exempt from partition, both before the father's death and after his demise.

15. Another solution proposed.

16. Other things exempt from partition, have been enumerated by MENU, "Clothes, vehicles, "ornaments, prepared food, women, sacri-"fices and pious acts, as well as the common "way, are declared not liable to distribution."†

16. MENU enumerates other things exempted.

17. Clothes, which have been worn, must not be divided. What is used by each person, belongs exclusively to him ; and what had been worn by the father, must be given by brethren parting after the father's decease, to the person who partakes of food at his obsequies: as directed by VRĬHASPATI; "The "clothes and ornaments, the bed and similar "furniture, appertaining to the father, as well "as his vehicle and the like, should be given, "after perfuming them with fragrant drugs and wreaths of "flowers, to the person who partakes of the "funeral repast." But new clothes are subject to distribution.

17. Exposition of the text.
The apparel of the brethren is retained by them.
The father's apparel is given away at his obsequies.
A passage of VRĬHASPATI confirms this.

New clothes may be distributed.

18. Vehicles.] The carriages, as horses, litters, or the like. Here also, that, on which each person rides, belongs exclusively to him. But the father's must be disposed of as directed in regard to his clothes. If the horses or the like be

18. So of vehicles.

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* VRĬHASPATI cited in the *Retnácara*. † MENU, 9. 219.

Cattle may be distributed in some cases.

If few, they go to the eldest brother: conformably to a passage of MENU.

numerous, they must be distributed among co-heirs who live by the sale of them. If they cannot be divided, the number being unequal, they belong to the eldest brother: as ordained by MENU; "Let them never "divide a single goat or sheep, or a single "beast with uncloven hoofs: a single goat or sheep belongs "to the first-born."*

19. Ornaments likewise belong to the wearer, under the text of MENU.

19. The ornaments worn by each person are exclusively his. But what has not been used, is common and liable to partition. "Such "ornaments, as are worn by women during "the life of their husband, the heirs of the "husband shall not divide among themselves: they, who do "so, are degraded from their tribe."† It appears from the condition here specified ("such orna-"ments as are worn,") that those, which are not worn, may be divided.

Unworn ornaments may be shared.

20. Prepared food is to be consumed.

20. Prepared food, as boiled rice, sweet cakes, and the like, must be similarly exempted from partition. Such food is to be consumed according to circumstances.

21. A well is to be used by turns.

21. Water, or a reservoir of it, as a well or the like, being unequal [to the allotment of shares,] must not be distributed by means of the value; but is to be used [by the co-heirs] by turns.

Annotations.

18. *The number being unequal.*] Inequality here signifies insufficiency for shares; not imparity of number. And this is fit. Suppose three horses and three sons: since the number is adequate to the allotment of shares, the horses may be divided. Suppose four horses and either three or five sons: since the horses do not answer to the number of co-heirs, and cannot be distributed into shares in their kind, and since a distribution by means of the value is forbidden, and the cattle is directed to be given to the eldest brother, the horses may be divided so far as they are adequate to the shares, and the surplus shall be given to the eldest. Throughout this title, imparity must be so understood. *Subód'hiní.*

21. *Being unequal.*] It is thus hinted, that, if the number be adequate, partition takes place. BA'LA'M-BHAT'T'A.

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* MENU, 9. 119. † Ibid, 9. 200.

22. The women or female slaves, being unequal [in number, to the shares,] must not be divided by the value, but should be employed in labour [for the co-heirs] alternately. But women (adultresses or others) kept in concubinage by the father, must not be shared by the sons, though equal in number: for the text of GAUTAMA forbids it. "No partition is allowed in the case of women connected [with the father or with one of the co-heirs]."*

22. Female slaves are to labour for the heirs by turns; but concubines are not to be shared.

GAUTAMA forbids it.

23. The term *yógacshéma* is a conjunctive compound resolvable into *yóga* and *cshéma*. By the word *yóga* is signified a cause of obtaining something not already obtained: that is, a sacrificial act to be performed with fire consecrated according to the *Véda* and the law. By the term *cshéma* is denoted an auspicious act which becomes the means of conservation of what has been obtained: such as the making of a pool or a garden, or the giving of alms elsewhere than at the altar. Both these, though appertaining to the father, or though accomplished at the charge of the patrimony, are indivisible; as LAUGA'CSHÍ declares, "The learned have named a conservatory act "*cshéma*, and a sacrificial one *yóga*; both are pronounced in-"divisible: and so are the bed and the chair."

23. Interpretation of *yóga* and *cshéma* sacrifices and pious acts, in the text before cited (§ 16.)

24. Some hold, that by the compound term *yógacshéma*, those, who effect sacrificial and conservatory acts (*yóga* and *cshéma*), are intended, as the king's counsellors, the stipendiary priests, and the rest. Others say, weapons, cow tails, parasols, shoes, and similar things, are meant.

24. Other interpretations of the same turn.

Annotations.

22. "*Women connected.*"] Enjoyed, or kept in concubinage. *Subód'hiní.*

Female slaves, being taken for enjoyment by any one of the brethren or co-heirs, belong exclusively to him. HARADATTA on GAUTAMA.

24. *Some hold.*] The interpretation, given by ME'D'HA'TIT'HI and the *Calpataru*, is stated. BA'LAM-BHAT'T'A.

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* GAUTAMA, 28. 45.

25. The common way is indivisible.

25. The common way, or road of ingress and egress to and from the house, garden, or the like, is also indivisible.

26. A text of Us'anas, concerning land, is restricted to the case of inferior sons; like a passage of Vrihaspati.

26. The exclusion of land from partition, as stated by Us'anas, ("Sacrificial gains, land, written documents, prepared food, water, "and women, are indivisible among kinsmen even to the thousandth degree;") bears reference to sons of a *Bráhman'a* by women of the military and other inferior tribes: for it is ordained [by Vrihaspati :] "Land, obtained by acceptance of donation, must "not be given to the son of a *Cshátriya* or other wife "of inferior tribe: even though his father give it to "him, the son of the *Bráhman'i* may resume it, when "his father is dead."*

27. A term in the text explained.

27. Sacrificial gains] acquired by officiating at religious ceremonies.

28. In general, the father's donations to his sons are not divisible.

28. What is obtained through the father's favour, will be subsequently declared exempt from partition.† The supposition, that any thing, acquired by transgressing restrictions regarding the mode of acquisition, is indivisible, has been already refuted.‡

29. The acquirer has a double share if the patrimony have been used: by the text of Vasisht'ha.

29. It is settled, that whatever is acquired at the charge of the patrimony, is subject to partition. But the acquirer shall, in such a case, have a double share, by the text of Vasisht'ha. "He, among them, who "has made an acquisition, may take a double portion of it."§

30. Not, however, where the common stock is improved.

30. The author propounds an exception to that maxim. "But, if the common stock be "improved, an equal division is ordained."||

31. Exposition of the text of

31. Among unseparated brethren, if the common stock be improved or augmented by any one of them, through agriculture, com-

Annotation.

29. *He, among them.*] Among the brethren. *Subód'hiní.*

* This is a passage of Vrihaspati ; according to the remark of Ba'lam-bhat't'a, and it is cited as such by Jímu'ta-va'hana, C. 9. § 19.

† Sect. 6. § 13—16.

‡ Sect. 1. § 16.

§ Vasisht'ha. 17. 42.

|| Ya'jnyawalcya. 2. 12[illegible]

YA'JNYAWALCYA.

merce, or similar means, an equal distribution nevertheless takes place; and a double share is not allotted to the acquirer.

SECTION V.

Equal rights of Father and Son in property ancestral.

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1. Grandsons share the allotment which their deceased father would have had.

1. THE distribution of the paternal estate among sons has been shown; the author next propounds a special rule concerning the division of the grandfather's effects by grandsons. "Among "grandsons by different fathers, the allot-"ment of shares is according to the fathers."*

2. Exposition of YA'JNYAWALCYA's text.

2. Although grandsons have by birth a right in the grandfather's estate, equally with sons; still the distribution of the grandfather's property must be adjusted through their fathers, and not with reference to themselves. The meaning here expressed is this: if unseparated brothers die, leaving male issue; and the number of sons be unequal, one having two sons, another three, and a third four; the two receive a single share in right of their father, the other three take one share appertaining to their father, and the remaining four similarly obtain one share due to their father. So, if some of the sons be living and some

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Annotations.

1. *Grandsons by different fathers.*] Children of distinct fathers; meaning sons of brothers. Another reading also occurs: *pramita-pitrĭcánám* "whose fathers are deceased," instead of *anéca-pitrĭcánám* "whose fathers are different." *Subód'hiní.*

BA'LAM-BHAT'T'A notices another variation of the reading, but with disapprobation; *anéca-pitryacánám.* It intends the same meaning, though inaccurately expressed.

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* YA'JNYAWALCYA, 2 121.

have died leaving male issue; the same method should be observed: the surviving sons take their own allotments, and the sons of their deceased brothers receive the shares of their own fathers respectively. Such is the adjustment prescribed by the text.

3. The right of father and son in property ancestral, is equal.

3. If the father be alive, and separate from the grandfather, or if he have no brothers, a partition of the grandfather's estate with the grandson would not take place; since it has been directed, that shares shall be allotted, in right of the father, if he be deceased: or, admitting partition to take place, it would be made according to the pleasure of the father, like a distribution of his own acquisitions: to obviate this doubt the author says; "For the ownership of father and son is the same in land,

Annotations.

3. *If he be deceased.*] A variation in the reading and punctuation of the passage is noticed by BA'LAM-BHAT'T'A: '*vibhágó n'ásti d'hriyamáné; apitari pitrĭtó bhága-calpanétyuclatwát,*' (instead of *vibhágó n'ásti; ad'hriyamáné pitari pitrĭtó, &c.*) "partition would not take place, if he be living, since it is directed "that shares shall be allotted in right of the father, if he be deceased."

To obviate this doubt, the author says.] If the father be alive, and separated from his own father, or if, being an only son with no brothers to participate with him, he be alive and not separated from his own father; then, since in the first mentioned case he is separate, no participation of the grandson's own father, in the grandfather's estate, can be supposed, and, therefore, as well as because he is surviving, the grandson cannot be supposed entitled to share the grandfather's property, since the intermediate person obstructs his title: and, in the second case, although the grandson's own father have pretensions to the property, since he is not separated, still the participation of the grandson in his grandfather's estate cannot be supposed, for his own father is living: hence no partition of the grandfather's effects, with the grandson whose father is living, can take place in any circumstances. Or, admitting that such partition may be made, because he has a right by birth; still, as the father's superiority is apparent, (since a distribution by allotment to him is directed, when he is deceased; and that is more assuredly requisite, if he be living;) it follows, that partition takes place by the father's choice, and that a double share belongs to him. *Subód'hini.*

For the ownership of father and son.] The *Calpataru* and APARA'RCA, read "The ownership of both father and son," instead of "For the ownership "of father and son:" *chóbhayóh,* instead of *chaiva hi.*

"which was acquired by the grandfather, or in a corrody, "or in chattels [which belonged to him."]*

4. Explanation of YA'JNYAWALCYA'S text.

4. Land.] A rice field or other ground. A corrody.] So many leaves receivable from a plantation of betle pepper, or so many nuts from an orchard of areca. Chattels.] Gold, silver, or other movables.

5. Since the right is equal, partition is not by the father's choice only; nor has he a double share.

5. In such property, which was acquired by the paternal grandfather, through acceptance of gifts, or by conquest or other means, [as commerce, agriculture, or service,†] the ownership of father and son is notorious: and therefore partition does take place. For, or because, the right is equal, or alike, therefore partition is not restricted to be made by the father's choice; nor has he a double share.

6. For the same reason, the distribution is as before stated, (§ 1.)

6. Hence also it is ordained by the preceding text, that "the allotment of shares "shall be according to the fathers," (§ 1), although the right be equal.

7. Other passages reconciled.

7. The first text, "When the father makes a partition, "&c.," (Sect. 2 § 1,) relates to property acquired by the father himself. So does that which ordains a double share: "Let "the father, making a partition, reserve two shares for him-"self."‡ The dependence of sons, as affirmed in the following passage, "While both parents live, the control remains, even "though they have arrived at old age;"§ must relate to effects acquired by the father or mother. This other passage, "They "have not power over it (the paternal estate) while their "parents live;"|| must also be referred to the same subject.

Annotations.

4. *Betle pepper.*] Pipe betle. LINN. Betle leaf.

Areca.] Areca Faufel. GOERT. Betle-nut.

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* YA'JNYAWALCYA, 2. 122. † BA'LAM-BHAT'T'A. ‡ NA'REDA, 13. 12.

§ The remainder of this passage has not been found, nor is the text cited in other compilations. BA'LAM-BHAT'T'A ascribes it to MENU; but it is not found in his Institutes.

|| MENU, 9. 204.

8. Partition of the grandfather's estate may be exacted by the sons from their father.

8. Thus, while the mother is capable of bearing more sons, and the father retains his worldly affections and does not desire partition, a distribution of the grandfather's estate does nevertheless take place by the will of the son.

9. The grandson may interpose to prevent the dissipation of the inherited property by the father; but not his acquired property.

9. So likewise, the grandson has a right of prohibition, if his unseparated father is making a donation, or a sale, of effects inherited from the grandfather: but he has no right of interference, if the effects were acquired by the father. On the contrary, he must acquiesce, because he is dependent.

10. The distinction stated explicitly.

10. Consequently the difference is this: although he have a right by birth in his father's and in his grandfather's property; still, since he is dependent on his father in regard to the paternal estate, and since the father has a predominant interest as it was acquired by himself, the son must acquiesce in the father's disposal of his own acquired property: but, since both have indiscriminately a right in the grandfather's estate, the son has a power of interdiction [if the father be dissipating the property.*]

11. A passage of MENU cited and explained.

11. MENU likewise shows, that the father, however reluctant, must divide with his sons, at their pleasure, the effects acquired by the paternal grandfather; declaring, as he does, ("If the "father recover paternal wealth not recovered by his co-"heirs, he shall not, unless willing, share it with his sons; "for in fact it was acquired by him:")† that, if the father recover property, which had been acquired by an ancestor, and taken away by a stranger, but not redeemed by the grandfather, he need not himself share it, against his inclination, with his sons; any more than he need give up his own acquisitions.

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* *Subód'hinì.* † MENU, 9. 209.

SECTION VI.

Rights of a posthumous Son and of one born after the partition.

1. A son, born after partition, is entitled to share: conformably with the text of YA'JNYAWALCYA.

1. How shall a share be allotted to a son born subsequently to a partition of the estate? The author replies, "When the sons have "been separated, one who is [afterwards] "born of a woman equal in class, shares "the distribution."*

2. He takes the allotments of his father and mother.

2. The sons being separated from their father, one, who shall be afterwards born of a wife equal in class, shall share the distribution. What is distributed, is distribution, meaning the allotments of the father and mother: he shares that; in other words, he obtains after [the demise of†] his parents, both their portions: his mother's portion, however, only if there be no daughter; for it is declared that "Daughters "share the residue of their mother's property, after pay- "ment of her debts."‡

3. Born of a woman of a different tribe, he takes only his proper allotment. (Sect. 8.)

3. But a son by a woman of a different tribe, receives merely his own proper share, from his father's estate, with the whole of his mother's property, [if there be no daughter.§]

Annotations.

2. *If there be no daughter.*] But, if there be a daughter, the son does not take his mother's portion. *Subód'hiní.*

3. *His own proper share.*] See Section 8.

From his father's estate.] BA'LAM-BHAT'T'A here notices a different reading; *pitryam* in the accusative, for *pitryát* in the ablative: and afterwards, *mátrĭcan* "maternal" for *mátuh* "his mother's." The sense is not materially affected by these variations.

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* YA'JNYAWALCYA, 2. 123. † BA'LAM-BHAT'T'A.

‡ YA'JNYAWALCYA, 2. 118. Vide Supra. Sect. 3. § 8. § *Subód'hiní.*

4. Passages of MENU and VRĪHASPATI of like import.

4. The same rule is propounded by MENU: "A son, "born after a division, shall alone take the "parental wealth."* The term parental (*pitryam*) must be here interpreted 'appertaining to both father and mother:' for it is ordained, that "A son, born before partition, has no claim on the wealth "of his parents; nor one, begotten after it, on that of his "brother."†

5. Exposition of the text last cited.

5. The meaning of the text is this: one, born previously to the distribution of the estate, has no property in the share allotted to his father and mother who are separated [from their elder children‡]; nor is one, born of parents separated [from their children], a proprietor of his brother's allotment.

6. The father's subsequent acquisitions belong to the son born after separation.

6. Thus, whatever has been acquired by the father in the period subsequent to partition, belongs entirely to the son born after separation. For it is so ordained: "All the wealth, "which is acquired by the father himself, "who has made a partition with his sons, "goes to the son begotten by him after the partition: those, "born before it, are declared to have no right."§

7. To be shared, however, with such brothers as were re-united.

7. But the son, born subsequently to the separation, must, after the death of his father, share the goods with those who re-united themselves with the father after the partition: as directed by MENU; "Or he shall participate with such of the brethren, as are re-united with the "father."‖

Annotations.

4. *On the wealth of his parents.*] This passage, being read differently by JĪMU'TA-VA'HANA (Ch. 7. § 5.), who writes *pitryé* "parental or paternal" instead of *pitróh* "of both parents," is not less ambiguous according to that reading, than the text cited from MENU.

5. *In the share.*] BA'LAM-BHAT'T'A censures another reading, *vibhágé* "in the division," for *bhágé* "in the share."

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* MENU, 9. 216. † VRĪHASPATI ‡ BA'LAM-BHAT'T'A
§ VRĪHASPATI. See JĪMU'TA-VA'HANA, Ch. 7 § 6. ‖ MENU, 9. 21[illegible]

8. Right of a posthumous son; declared in a passage of YA'JNYAWALCYA.

8. When brethren have made a partition subsequently to their father's demise, how shall a share be allotted to a son born afterwards? The author replies, "His allotment must absolutely be made, out of the visible estate "corrected for income and expenditure."*

9. Exposition of the text.

9. A share allotted for one who is born after a separation of the brethren, which took place subsequently to the death of the father, at a time when the mother's pregnancy was not manifest, is "his allotment." But whence shall it be taken? The author replies, "from the visible estate" received by the brethren, "corrected for income and expenditure." Income is the daily, monthly, or annual produce. Liquidation of debts contracted by the father, is expenditure. Out of the amount of property corrected by allowing for both income and expenditure, a share should be taken and allotted to the [posthumous] son.

10. An equal share is formed for him, out of the allotments of the

10. The meaning here expressed is this: Including in the several shares the income thence arisen, and subtracting the father's debts, a small part should be taken from the re-

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Annotations.

8. *Absolutely.*] The particle *vá* is here employed affirmatively. The meaning is, that an allotment for them should be made only from the visible estate corrected for income and expenditure. *Subód'hiní.*

9. *His allotment.*] The pronoun "his" refers to the son born after partition. *Subód'hiní.*

Corrected for income and expenditure.] If agriculture or the like have been practised by the brethren with their several shares after separation, the gain is "income." The payment of the father's debts, the support of their own families, and similar disbursements, constitute "expenditure." Counting the income in the shares, and deducting the expenditure from the allotments, as much as may be in each instance proper, should be taken from each portion, and an allotment be thus adjusted for a son born of a pregnancy which existed at the moment of the father's decease, as well as at the time of the partition, though not then manifest. *Subód'hiní.*

10. *Including in the several shares, &c.*] It is the patrimony though divided, as much as when undivided. Since then the offspring, though yet in the mother's womb, is entitled to a share of the father's goods, as being his issue, therefore that offspring is entitled to participate in the gain arising out of the patrimony. Here again, if it be a male child, he has a right to an equal share [with others of the same class.] But, if a female child, she participates for a quarter of the share due to a brother of the same rank with herself. This which will be subsequently explained, should be here understood. *Subód'hiní.*

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* YA'JNYAWALCYA, 2. 123.

rest; making allowance for gain and for debts.

mainder of the shares respectively, and an allotment, equal to their own portions, should be thus formed for the [posthumous] son born after partition.

11: The posthumous son of a brother has the same right.

11. This must be understood to be likewise applicable in the case of a nephew, who is born after the separation of the brethren; the pregnancy of the brother's widow, who was yet childless, not having been manifest at the time of the partition.

12. If the pregnancy be manifest, the partition should be postponed until after the delivery: as directed by VASISHT'HA.

12. But, if she were evidently pregnant, the distribution should be made, after awaiting her delivery; as VASISHT'HA directs, "Partition "of heritage [takes place] among brothers "[having waited] until the delivery of such "of the women as are childless [but preg- "nant]."* This text should be interpreted, 'having waited until the delivery of the women who are 'pregnant.'

Annotations.

11. *Who was yet childless.*] This is according to the reading and interpretation followed by BA'LAM-BHAT'T'A. He notices, however, another reading, (*aprajasya* instead of *aprajasi,*) which connects the epithet of "childless" with the brother.

12. *Such of the women as are childless but pregnant.*] VA'CHESPATI-MIS'RA connects the word "women" (or 'wives') with the term "brothers." The *Calpataru*, and other compilations, also understand the wives of brothers to be meant; but, in the *Smriti-chandricá*, the passage is interpreted as relating to the widows of the father. All concur in explaining it as meant of pregnant widows.

This text should be interpreted.] The most natural construction of the original text is 'Partition of heritage is among brothers and women who are 'childless; until the birth of issue.' The authors of the *Calpataru* and *Chintáman'i* follow that interpretation, and conclude that 'a share should be set 'apart for the widow who is likely to have issue (being supposed pregnant): 'and, when she is delivered, the share is assigned to her son, if she bear male 'issue; but, if a son be not born, the share goes to the brethren, and the woman 'shall have a maintenance.' The author of the *Smriti-chandricá* acknowledges that to be the natural construction of the words; but rejects the consequent interpretation, because it contains a contradiction, and because widows are not entitled to participate as heirs. He expounds the text, nearly as it is explained in the *Mitácshará*, viz., 'Among brothers, who have continued to live together,

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* The first part of this passage corresponds with a text of VASISHT'HA's Institutes, (17. 36.); but the sequel of it is not to be found in that work.

13. Presents of parents to their children are incontestable:

13. It has been stated, that the son, born after partition, takes the whole of his father's goods and of his mother's.* But if the father, or the mother, affectionately bestow ornaments or other presents on a separated son, that gift must not be resisted by the son born after partition; or, if actually given, must not be resumed. So the author declares: "But effects, which have been given "by the father, or by the mother, belong to "him on whom they were bestowed."†

according to YA'JNYAWALCYA.

14. Whether given after a division;

14. What is given (whether ornaments or other effects,) by the father and by the mother, being separated from their children, to a son already separated, belongs exclusively to him; and does not become the property of the son born after the partition.

15. Or before it.

15. By parity of reason, what was given to any one, before the separation, appertains solely to him.

16. This equally holds good when the separated sons are the heirs.

16. So, among brethren, dividing the allotment of their parents who were separated from them, after the demise of those parents, (as may be done by the brothers, if there be no son born subsequently to the original partition;) what had been given by the father and mother to each of them, belongs severally to each, and is shared by no other. This must be understood.

Annotations.

'until the delivery of the childless but pregnant widow, partition of heritage 'takes place after the birth of the issue, when its sex is known; and does 'not take place immediately after the obsequies.' VIS'WE'S'WARA-BHAT'T'A, in the *Madana-Párijáta*, exhibits a similar interpretation: 'Partition takes place 'after awaiting the delivery of widows who are evidently pregnant.'

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* Vide Supra. § 1. § 7. † YA'JNYAWALCYA, 2. 124.

SECTION VII.

Shares allotted to provide for Widows and for the nuptials of unmarried Daughters. The initiation of uninitiated Brothers defrayed out of the joint funds.

1. The widows of the father are entitled to equal shares with the sons; as provided by YA'JNYAWALCYA.

1. WHEN a distribution is made during the life of the father, the participation of his wives, equally with his sons, has been directed. (" If he " make the allotments equal, his wives " must be rendered partakers of like por- " tions."*) The author now proceeds to declare their equal participation, when the separation takes place after the demise of the father: " Of heirs dividing " after the death of the father, let the mother also take an " equal share."†

2. Exposition of the text. They take only half, if they have peculiar property.

2. Of heirs separating after the decease of the father, the mother shall take a share equal to that of a son; provided no separate property had been given to her. But, if any had been received by her, she is entitled to half a share, as will be explained.‡

3. The initiation of brothers should

3. If any of the brethren be uninitiated, when the father dies, who is competent to complete their initiation? The author replies:

Annotations.

2. *Provided no separate property had been given.*] Peculiar property of a woman (*Strád'hana.*) Vide C. 2. Sect. 11. § 1.

3. *Initiation.*] *Sanscára;* a succession of religious rites commencing on the pregnancy of the mother and terminating with the investiture of the sacerdotal thread, or with the return of the student to his family and finally his marriage.

* § 2. § 8. † YA'JNYAWALCYA, 2. 124. ‡ Vide C. 2. § 11. § 34.

be completed out of the common funds.

" Unitiated brothers should be initiated by " those, for whom the ceremonies have " been already completed."*

4. Exposition of YA'JNYAWALCYA'S text.

4. By the brethren, who make a partition after the decease of their father, the uninitiated brothers should be initiated at the charge of the whole estate.

5. For the marriage of sisters, quarter shares are allotted.

5. In regard to unmarried sisters, the author states a different rule: " But sisters should be " disposed of in marriage, giving them, as " an allotment, the fourth part of a bro-" ther's own share."†

6. Explanation of YA'JNYAWALCYA'S text.

6. The purport of the passage is this: Sisters also, who are not already married, must be disposed of, in marriage, by the

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Annotations.

4. *By the brethren, who make a partition, &c.*] By such, for whom all the initiatory ceremonies, including marriage, have been completed. BA'LAM-BHAT'T'A.

After the decease of their father.] In like manner, while the father is living but disqualified by degradation from his tribe or other incapacity, if the brethren be themselves the persons who make the partition, the same rule must be understood in regard to the initiation of brothers at the charge of the common stock. BA'LAM-BHAT'T'A.

6. *The purport of the passage is this.*] As commentators disagree in their interpretation of the text, and a subtile difficulty does arise, the author proceeds to show, that his own exposition, and no other, conveys the real sense of the passage. Taking the phrase " the uninitiated should be initiated" as here understood from the preceding sentence (§ 3), he expounds the text: ' Sisters also, who are not already married, &c.'

Some thus interpret the words " own share:" ' After assigning as many ' shares as there are brothers, a quarter part should be given to a sister, out ' of their several allotments: so that, if there be two or more sisters, a quarter ' of every share must be given to each of them.'

But others thus expound those terms: ' Deducting a quarter from each ' of their shares, the brothers should give that to a sister. If there be two or ' more sisters, they and their brothers shall respectively take the same sub-' tracted share [and residue:] and no separate deduction shall be made [for each.']

Both interpretations are unsuitable: for, according to the first, if there be one brother and seven or eight sisters,‡ nothing will remain for the brother, if

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* YA'JNYAWALCYA, 2. 125. † Ibid. 2. 125.

‡ If there be four sisters, nothing will remain for the brother; if there be a greater number, the allotment of a quarter to each is impossible. C.

brethren contributing a fourth part out of their own allotments. Hence it appears, that daughters also participate after the death of their father. Here, in saying "of a brother's own share," the meaning is not, that a fourth part shall be deducted out of the portions allotted to each brother, and shall be so contributed; but that the girl shall be allowed to participate for a quarter of such a share as would be assignable to a brother of the same rank with herself. The sense expressed is this: if the maiden be daughter of a *Bráhman'i*, she has a quarter of so much as is the amount of an allotment for a son by a *Bráhman'i* wife.

A quarter is not to be taken from every brother's share; but a portion, equal to a quarter of the amount of a brother's share, is assigned to the sister.

7. For example, if a certain person had only a *Bráhman'i* wife, and leaves one son and one daughter; the whole paternal estate should be divided into two parts, and one such part be subdivided into four: and, the quarter being given to the girl, the remainder shall be taken by the son. Or, if there be two sons and one daughter, the whole of the father's estate should be divided into three parts; and one such part be sub-divided into four: and, the quarter having been given to the girl, the remainder shall be shared by the sons. But, if there be one son and two daughters, the

7. Example, where the brothers and sisters are of the same tribe.

Annotations.

a quarter must be given to each sister; or, if there be one sister and many brothers, the sister has a greater allotment than a brother, if a quarter must be given to her by each of her brothers; and this is inconsistent with a text, which indicates, that a daughter should have less than a son.

Under the second exposition, if there be one sister and numerous brothers, the same objection arises, which was before stated; or, in the case of one brother and seven or eight sisters, suppose the amount of the brother's share to be a *nishca*, the quarter of that is very inconsiderable, and the allotment of shares out of it is still more trifling: the terms of the text "giving them, as an allotment, the fourth part," (§ 5.) would be impertinent; or, admitting that the precept is observed, still there would be an inconsistency.

But, according to our method, since each sister has exactly a quarter of a share, there is nothing contradictory to the terms of the text, "a fourth part" (§ 5.) *Subód'hiní.*

7. *Divided into two parts, and one such part into four.*] If the text were not so explicit, it might have been rather concluded, that the estate should be divided into five parts; one for the sister, and four for the brother: which would be exactly an allotment of a quarter of the amount of a brother's share to a sister. But, according to the distribution exemplified in the text, the sister receives one quarter of that which she would have received had she been

father's property should be divided into thirds, and two shares be severally sub-divided into quarters: then, having given two [quarter] shares to the girls, the son shall take the whole of the residue. It must be similarly understood in any case of an equal or unequal number of brothers and sisters, alike in rank.

8. Instance, where they are of different tribes.

8. But, if there be one son of a *Bráhman'i* wife and one daughter by a *Cshátriya* woman, the paternal estate should be divided into seven parts; and the three parts, which would be assignable to the son of a *Cshátriya* woman, must be sub-divided by four: then, giving such fourth part to the daughter of the *Cshátriya* wife, the son of the *Bráhman'i* shall take the residue. Or, if there be two sons of the *Bráhman'i* and one daughter by the *Cshátriya* wife, the father's estate shall be divided into eleven parts; and three parts, which would be assignable to a son by a *Cshátriya* wife, must be sub-divided by four: having given such quarter share to the daughter of the *Cshátriya*, the two sons of the *Bráhman'i* shall share and take the whole of the remainder. Thus the mode of distribution may be inferred in any instance of an equal or unequal number of brothers and sisters dissimilar in rank.

9. The allotment of a fourth is

9. Nor is it right to interpret the terms of the text ("giving the fourth part" § 5.) as signifying 'giving money sufficient for her marriage,'

Annotations.

male instead of female. It is, however, in the instance first stated, a seventh only of what her brother actually reserves for himself.

This is consonant to ME'D'HA'TIT'HI'S interpretation of a parallel passage of MENU:* where he observes, that 'if the maiden sisters be numerous, the 'portions are to be adjusted at the fourth part of an allotment for a brother 'of the same class: thus the meaning is, let the son take three parts, and let 'the damsel take the fourth.'

9. *For her marriage.*] *Sanscára* (§ 3.) signifies, in this instance, marriage: since the previous ceremonies are not performed for females, but only for male children. *Subód'hiní, &c.*

* Vide Infra, § 9.

not indefinite; intending merely a sufficiency for defraying the charges of the marriage.

by considering the word "fourth" as indefinite. For that contradicts the text of MENU, "To the maiden sisters, let their "brothers give portions out of their own "allotments respectively: to each the fourth part of the "appropriate share; and they, who refuse to give it, shall be "degraded."*

10. Explanation of a text of MENU of like import.

10. The sense of this passage is as follows. Brothers, of the sacerdotal and other tribes, should give to their sisters belonging to the same tribes, portions out of their own allotments; that is, out of the shares ordained for persons of their own rank, as subsequently explained.† They should give to each sister a quarter of their own respective allotments. It is not meant, that a quarter should be deducted from the share of each and be given to the sister. But, to each maiden, should be severally allotted the quarter of a share ordained for a son of the same class. The mode of adjusting the division, when the rank is dissimilar and the number unequal, has been stated: and the allotment of such a share appears to be indispensably requisite, since the refusal of it is pronounced to be a sin: "They, who refuse to give "it, shall be degraded." (§ 9.)

11. An objection answered.

11. If it be alleged, that, here also, the mention of a quarter is indeterminate, and the allotment of property sufficient to defray the expenses of the nuptials is all which is meant to be expressed: the answer is, no; for there is not any proof, that the allotment of a quarter of a share is indefinite in both codes; and the withholding of it is pronounced to be a sin.

Annotations.

"*Out of their own allotments respectively.*"] A difference in the reading of this passage is remarked in the notes on JIMU'TA-VA'HANA. (C. 3. Sect. 2. § 36.) A further variation occurs in the commentary by ME'D'HA'TIT'HI, who reads *Swábhyah swá bhyah* "to their own sisters;" that is, "sisters of their own classes respectively."

"*To each the fourth part of the appropriate share.*"] This part of the text is understood differently by JÍMU'TA-VA'HANA. C. 3. Sect. 2. § 36.

11. *In both codes.*] In the text of YA'JNYAWALCYA and in that of MENU. *Subód'hiní.*

Pronounced to be a sin.] In MENU's text. (§ 9.) BA'LAM-BHAT'T'A.

* MENU. 9. 118. † § 8. § 4.

12. A further objection confuted.

12. As for what is objected by some, that a sister, who has many brothers, would be greatly enriched, if the allotment of a [fourth*] part were positively meant; and that a brother, who has many sisters, would be entirely deprived of wealth; the consequence is obviated in the manner before explained:† it is not here directed, that a quarter shall be deducted out of the brother's own share and given to his sister; whence any such consequence should arise.

13. ME'D'HA'TIT'HI'S doctrine is right, not BHA'RUCHI'S.

13. Hence the interpretation of ME'D'HA'TIT'HI who has no compeer, as well as of other writers, who concur with him, is square and accurate; not that of BHA'RUCHI.

14. Before the father's demise, a daughter can have only what he pleases to give her.

14. Therefore, after the decease of the father, an unmarried daughter participates in the inheritance. But, before his demise, she obtains that only, whatever it be, which her father gives; since there is no special precept respecting this case. Thus all is unexceptionable.

SECTION VIII.

Shares of Sons belonging to different tribes.

1. Partition among sons by women of different tribes.

1. THE adjustment of a distribution among brothers alike in rank, whether made with each other, or with their father, has been propounded in preceding

Annotations.

13. *Who has no compeer.*] Who is independent of control. BA'LAM-BHAT'T'A. This commentator treats *Asaháya* as an epithet of the author next named, (ME'D'HA'TIT'HI.) The word occurs, however, as a proper name in the *Viváda-retnácara,* in commenting on a passage of MENU (9. 165.) The meaning may be that 'the opinion of ASAHA'YA, ME'D'HA'TIT'HI, and the rest, is accurate: not that of BHA'RUCHI.'

* BA'LAM-BHAT'T'A. † § 6.

passages ("When the father makes a partition, &c."*). The author now describes partition among brethren dissimilar in class: "The sons of "a *Bráhman'a*, in the several tribes, have four shares, or "three, or two, or one; the children of a *Cshátriya* have "three portions, or two, or one; and those of a *Vais'ya* "take two parts, or one."†

declared by YA'-JNYAWALCYA.

2. Under the sanction of the law,‡ instances do occur of a *Bráhman'a* having four wives; a *Cshátriya*, three; and a *Vais'ya*, two: but a *S'údra*, one. In such cases, the sons of a *Bráhman'a*, born to him by women of the several tribes, shall have four shares, three, two, or one, in the order of these tribes.

2. Explanation of the text.

3. The several tribes (*varn'as'as.*)] Women of the different classes, the sacerdotal and the rest, are here signified by the word tribe (*varn'a.*) The termination *s'as*, subjoined to a noun in the singular number and locative or other case, bears a distributive sense, conformably with the grammatical rule.§

3. Etymology of a term contained in it.

4. The meaning here expressed is this: The sons of a *Bráhman'a*, by a *Bráhman'i* woman, take four shares a-piece: his sons by a *Cshátriya* wife, receive three shares each; by a *Vais'ya* woman, two; by a *S'údra*, one.

4. Distribution among the sons of a *Bráhman'a*.

5. The sons of a *Cshátriya*, born to him by women of the several tribes, (for that is here understood,) have three shares, or two, or one.

5. Among the sons of a *Cshátriya*.

Annotations.

ME'D'HA'TIT'HI is a celebrated commentator on MENU: and his exposition of MENU'S text (§ 9.) agrees with the author's explanation of YA'JNYAWALCYA'S, (§ 5.)

BHA'RUCHI, an ancient author, probably maintained the opinion and interpretation which are refuted in the present section.

2. *Under the sanction of the law.*] The initial words of a passage of YA'JNYAWALCYA (1. 57.) are cited in the text, for the sanction of the practice here noticed.

3. *Conformably with the grammatical rule.*] The author quotes a rule of grammar. (PA'N'INI, 5. 4. 43.)

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* § 2. § 1.
† YA'JNYAWALCYA, 2. 126.
‡ Ibid. 1. 57.
§ PA'N'INI, 5. 4. 43.

in the order of the tribes: that is, the sons of a *Cshátriya* man, by a *Cshátriya* woman, take three shares each; by a *Vais'ya* woman, two; by a *S'údra* wife, one.

6. Among the sons of a *Vais'ya*.

6. The sons of a *Vais'ya* by women of the several tribes, (for here, again, the same term is understood,) have two shares, or one, in the order of the classes: that is, the sons of a *Vais'ya* man, by a *Vais'ya* woman, take two shares a-piece; by a *S'údra* woman, one.

7. Among the sons of a *S'údra*.

7. Since a man of the servile tribe cannot have a son of a different class from his own, because one wife only is allowed to him, (for "a "*S'údra* woman only must be the wife of a "*S'údra* man;"*) partition among his children takes place in the manner before mentioned.

8. Land received in gift is exclusively taken by the *Bráhman'í's* son: as directed by VRĬHASPATI.

8. Although no restriction be specified in the text (§ 1.), it must be understood to relate to property other than land obtained by the acceptance of a gift. For it is declared [by VRĬHASPATI†] "Land obtained by "acceptance of donation, must not be "given to the son of a *Cshátriya* or other wife of inferior "tribe: even though his father give it to him, the son of "the *Bráhman'í* may resume it, when his father is dead."

9. Acquired by other means, as purchase, &c., it is shared by the sons of the *Cshátriya* and *Vais'ya*; but not by the *S'údra's* son.

9. Since acceptance of donation is here expressly stated, land obtained by purchase or similar means appertains also to the son of a *Cshátriya* or other inferior woman. For the son by a *S'údra* woman is specially excepted, ("The son, begotten

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Annotations.

7. *In the manner beforementioned.*] As directed by the texts above cited. YA'JNYAWALCYA, 2. 115. and 118. Vide Sect. 2. and 3.) *Subód'hiní.*

9. *Begotten on a* S'údri *woman.*] *S'údri* does not here bear its regular signification of 'wife of a *S'údra* man,' but intends a wife of the regenerate man, being a *S'údra* woman. *Subód'hiní* and BA'LAM-BHAT'T'A.

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* MENU, 3. 13. † BA'LAM-BHAT'T'A supplies the author's name.

but not by the S'údra's son.

"on a S'údri woman by any man of a "twice-born class, is not entitled to a share "of land."*) Now, if land acquired by purchase and similar means did not belong to the sons of a Cshátriya or Vais'ya wife, the special exception of a son by a S'údra woman would be impertinent.

10. The entire exclusion of the son by a S'údra woman, as ordained by MENU, supposes something to have been bestowed on him by his father.

10. But the following text, "The son of a Bráhman'a, "a Cshátriya, or a Vais'ya, by a woman of "the servile class, shall not share the inherit-"ance: whatever his father may give him, "let that only be his property:"† relates to the case where something, however inconsiderable, has been given by the father, in his life-time, to his son by a S'údra woman. But, if no affectionate gift have been bestowed on him by his father, he participates for a single share [of the movables]. Thus there is nothing contradictory.

Else he shares the movables.

SECTION IX.

Distribution of effects discovered after partition.

1. YA'JNYAWALCYA directs the distribution of goods which were withheld from partition.

1. SOMETHING is here added respecting the residue after a general distribution of the estates. "Effects, which have been withheld by one "co-heir from another, and which are dis-"covered after the separation, let them "again divide in equal shares: this is a "settled rule."‡

Annotations.

The special exception of a son by a S'údra *woman would be impertinent.*] Since the son of the *S'údra* is specifically excepted, it follows, that the sons of the *Cshátriya* wife, and those of the *Vais'ya*, do participate. *Subód'hiní.*

10. *Where something . . . . has been given.*] Where an affectionate gift has been bestowed. In some copies, the reading is so: *(prasáda-dattam,* in place of *pradattam.)* BA'LAM-BHAT'T'A.

* This also is a passage of VRĬHASPATI. See JÍMU'TA-VA'HANA. Ch. 9 § 22.
† MENU, 9. 155.
‡ YA'JNYAWALCYA. 2. 127.

2. When discovered, they shall be divided.

2. What had been withheld by co-parceners from each other, and was not known at the time of dividing the aggregate estate, they shall divide in equal proportions, when it is discovered after the partition of the patrimony. Such is the settled rule or maxim of the law.

3. In equal shares, by all the co-heirs.

3. Here, by saying "in equal shares," the author forbids partition with deductions. By saying "let them divide," he shows, that the goods shall not be taken exclusively by the person who discovers them.

4. The embezzlement was an offence.

4. Since the text is thus significant, it does not imply that no offence is committed by embezzling the common property.

5. Is it so, only if committed by an elder brother, as in a passage of MENU?

5. Is it not shown by MENU to be an offence on the part of the eldest brother, if he appropriate to himself the common property; and not so, on the part of younger brothers? "An "eldest brother, who from avarice shall "defraud his younger brothers, shall forfeit the honors of "his primogeniture, be deprived of his [additional] share, "and be chastised by the king."*

6. No. If criminal in an elder brother, it is so, *a fortiori* in a younger brother.

6. That inference is not correct; for, by pronouncing such conduct criminal in an elder brother, who is independent and represents the father, it is more assuredly shown (by the argument exemplified in the loaf and staff) to be criminal in younger brothers, who are subject to the control of the eldest, and hold the place of sons. Accordingly it is declared [in the *Véda*†] to be an offence without exception or

A passage of the *Veda* declares the

Annotations.

6. *By the argument exemplified in the loaf and staff.*] If a staff, to which a loaf is attached, be taken away by thieves, it is inferred, that assuredly the loaf also has been stolen by them.‡ So, in the case under consideration, if the eldest, who is independent and represents the father, be criminal for withholding the goods, the same may surely be affirmed concerning the rest, if they do so. *Subód'hinì*

guilt in general terms.

distinction : "Him, indeed, who deprives "an heir of his right share, he does certainly "destroy ; or, if he destroy not him, he destroys his son, "or else his grandson."*

7. Explanation of that passage.

7. Whoever debars, or excludes, from participation, an heir, or person entitled to a share, and does not yield to him his due allotment : he, being thus debarred of his share, destroys or annihilates that person who so debars him of his right : or, if he do not immediately destroy him, he destroys his son or his grandson.

8. Embezzlement of common property is criminal in any person.

8. It is thus pronounced to be criminal in any person to withhold common property, without any distinction of eldest [or youngest.]

9. The use of it, under the supposition of a right to do so, is argued to be innocent.

9. It is argued, that blame is not incurred by one who takes the goods, thinking them his own, under the notion that the common property appertains also to him.

10. But still the offence is committed.

10. That is wrong. He does incur blame : for, though he took it thinking it his own, still he has taken the property of another person, contrary to the injunction which forbids his so doing.

11. An illustration from the *Mímansá*.

11. As in answer to a proposed solution of a difficulty 'If an oblation of green kidney beans† be 'not procurable, and black kidney beans‡ be 'used in their stead, by reason of the resem-

Annotations.

11. *As in answer to a proposed solution.*] The author here adduces an example of reasoning from the *Mímansá*, in the 6th book *(Ad'hyáya,)* 3rd section *(páda)* and 6th topic *(ad'hicaran'a.)* *Subód'hiní.*

The black kidney bean, with certain other kinds of grain, is declared by a passage of the *Véda* unfit to be used at sacrifices. An oblation of green kidney beans, by another passage of the same, is directed to be made on certain occasions. If then the green sort be not procurable, may the black kind be used in its stead? The solution first proposed is, that the black sort may be substituted for the green kind, in like manner as wild rice is used in place of the

* A passage of the *Véda*, as observed by BA'LAM-BHAT'T'A.

† *Mudga* : Phaseolus Mungo; green kidney beans.

‡ *Másha* : Phaseolus Max, or radiatus : black kidney beans.

'blance, the maxim, which prohibits the employment of these 'in sacrifices, is not applicable, because they were used by 'mistake for ground particles of green kidney beans;' it is on the contrary maintained, as the right opinion, that, 'although "the ground particles of green kidney beans be taken as 'being unforbidden, still the ground particles of black kidney 'beans are also actually employed: and the prohibitory com- 'mand is consequently applicable in this case.'

12. Conclusion.

12. Therefore it is established, both from the letter of the law and from reasoning, that an offence is committed by taking common property.

SECTION X.

Rights of the Dwyámushyáyan'a *or Son of two Fathers.*

1. The issue of one by the wife of another, is heir to both.

1. INTENDING to propound a special allotment for the *Dwyámushyáyan'a* (or son of two fathers,) the author previously describes that relation. "A son, begotten by one, who has "no male issue, on the wife of another man, "under a legal appointment, is lawfully heir, and giver of "funeral oblations, to both fathers."*

Annotations.

cultivated sort: and, in answer to the argument drawn from the special prohibition, it is pretended, that the prohibition holds against the use of the black kidney bean as such, and not against its use when ground particles of this and other sorts are taken with particles of green kidney beans as being unforbidden. But the correct and demonstrated opinion is, that the black kind is altogether unfit to be used at sacrifices, being expressly prohibited: its particles, therefore, although intermixed with other sorts, are to be avoided; and for this reason they must not be used as a substitute for the other kind. *Subód'hiní* and BA'LAM-BHAT'T'A.

1. Dwyámushyáyan'a, *or Son of two Fathers.*] As here described, the *Dwyámushyáyan'a* is restricted to one description of adoptive son, the *Cshétraja* or son of the wife: but the term is applicable to any adopted son retaining his

* YA'JNYAWALCYA, 2. 123.

2. Interpretation of YA'JNYAWALCYA's text.

2. A son, procreated by the husband's brother or other person (having no male issue), on the wife of another man, with authority from venerable persons, in the manner before ordained, is heir of both the natural father and the wife's husband: he is successor to their estates, and giver of oblations to them, according to law.

3. Further explanation of it.

3. The meaning of this is as follows. If the husband's brother, or other person, duly authorized, and being himself destitute of male issue, proceed to an intercourse with the wife of a childless man, for the sake of raising issue both for himself and for the other; the son, whom he so begets, is the child of two fathers and denominated *Dwyámushyáyan'a*. He is heir to both, and offers funeral oblations to their manes.

4. But if the natural father have other male issue, the child is son of the husband only;

4. But, if one, who has male issue, being so authorized, have intercourse with the wife for the sake of raising up issue to her husband only; the child, so begotten by him, is son of the husband, not of the natural father: and, by this restriction, he is not heir of his natural father, nor qualified to present funeral oblations to his manes. It is so declared by MENU: "The owners of the seed and of the soil "may be considered as joint owners of the crop, which they "agree, by special compact, in consideration of the seed, to "divide between them."*

as appears from a passage of MENU.

5. Exposition of the text.

5. By special compact.] When the field is delivered by the owner of the soil to the owner of the seed, on an agreement in this form,

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Annotations.

filial relation to his natural father with his acquired relation to his adoptive parent See Sect. 11. § 32.

2. *In the manner before ordained.*] The initial words of another passage of YA'JNYAWALCYA are here cited It is as follows: "Let the husband's brother, "or a kinsman near or remote, having been authorized by venerable persons, "and being anointed with butter, approach the childless wife at proper seasons, "until she become pregnant. He, who approaches her in any other mode, "is degraded from his tribe. A child, begotten in that mode, is the husband's "son, denominated *(cshétraja)* son of the wife."†

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* [illegible] 9. 53 [illegible] † [illegible] 1. 69.–70

"let the crop, which will be here produced, belong to us "both;" then the owners both of the soil and of the seed are considered by mighty sages as sharers or proprietors of the crop produced in that ground.

6. Another passage of the same author.

6. So [the same author.] "Unless there be a special "agreement between the owners of the land "and of the seed, the fruit belongs clearly "to the land-owner; for the soil is more "important than the seed."*

7. If there be no stipulation, the child belongs to the mother's husband.

7. But produce, raised in another's ground, without stipulating for the crop, or without a special agreement that it shall belong to both, appertains to the owner of the ground: for the receptacle is more important than the seed; as is observed in the case of cows, mares, and the rest.

8. The commission to raise up issue is restricted to an affianced wife: as appears from a comparison of passages of MENU.

8. Here, however, the commission for raising up issue is relative to a woman who was only betrothed, since any other such appointment is forbidden by MENU. For, after thus premising a commission. "On failure "of issue, the desired offspring may be pro-"created," either by his brother or some "other kinsman, on the wife who has been "duly authorized: anointed with liquid butter, silent, in the "night, let the kinsman, thus appointed, beget one son, but "a second by no means, on the widow [or childless wife;]"† MENU has himself prohibited the practice: "By regenerate "men, no widow must be authorized to conceive by any "other: for they, who authorize her to conceive by any other, "violate the primeval law. Such a commission is no where "mentioned in the nuptial prayers; nor is the marriage of

Annotations

8. *The commission . . . is relative to a woman who was only betrothed.*] The commentator, BA'LAM-BHAT'T'A, dissents from this doctrine: and cites passages of law to show, that, after troth verbally plighted, should the intended husband die before the actual celebration of the marriage, the damsel is at the disposal of her father to be given in marriage to another husband. It is unnecessary to go into his explanation of the passages cited in the text, in support of another opinion.

* MENU, 9. 52. † Ibid., 9. 59.—60.

"widows noticed in laws concerning wedlock. This practice, "fit only for cattle, and reprehended by learned priests, was "introduced among men, while VE'NA had sovereign sway. "He, possessing the whole earth, and therefore eminent "among royal saints, gave rise to a confusion of tribes, when "his intellect was overcome by passion. Since his time, the "virtuous censure that man, who, through delusion of mind, "authorizes a widow to have intercourse for the sake of "progeny."*

9. An option must not be inferred from the injunction contrasted with the prohibition: for MENU enjoins continence to a widow.

9. Nor is an option to be assumed from the [contrast of] precept and prohibition. Since they, who authorize the practice, are expressly censured: and disloyalty is strongly reprobated in speaking of the duties of women; and continence is no less praised. This, MENU has shown: "Let the faithful wife "emaciate her body by living voluntarily on "pure flowers, roots, and fruit; but let her not, when her "lord is deceased, even pronounce the name of another man. "Let her continue till death forgiving all injuries, performing "harsh duties, avoiding every sensual pleasure, and cheer- "fully practising the incomparable rules of virtue, which "have been followed by such women, as were devoted to one "only husband. Many thousands of *Bráhman'as,* having "avoided sensuality from their early youth, and having left "no issue in their families, have ascended nevertheless to "heaven; and, like those abstemious men, a virtuous wife "ascends to heaven, though she have no child, if, after the "decease of her lord, she devote herself to pious austerity: "but a widow, who, from a wish to bear children, slights her "deceased husband, brings disgrace on herself here below, "and shall be excluded from the abode of her lord."† Thus the legislator has forbidden the recourse of a widow or wife to another man, even for the sake of progeny. Therefore it is not right to deduce an option from the injunction contrasted with the prohibition.

Annotations.

9. *It is not right to deduce an option.*] For an option is inferred in the case of equal things: but here a censure is passed on those persons, who authorize such a practice, and none upon those who forbid it. The injunction

* MENU, 9. 64.—68. † Ibid., 5. 157.—161

10. Menu explains the occasion on which she may be authorized to raise up issue to her husband.

10. The authorizing of a woman sanctified by marriage, [to raise up issue to her husband by another man,] being thus prohibited, what then is a lawful commission [to raise up issue ?] The same author explains it : "The damsel, whose husband shall die "after troth verbally plighted, his brother shall take in marriage according to this rule : having espoused her in due "form, she being clad in a white robe, and pure in her con-"duct, let him privately approach her once in each proper "season, until issue be had."*

11. Interpretation of the text.

11. It appears from this passage, that he, to whom a damsel was verbally given, is her husband without a formal acceptance on his part. If he die, his own brother of the whole blood, whether elder or younger, shall espouse or take in marriage the widow. "In due form," or as directed by law, "having espoused" or wedded her, and "according to this rule," namely, with an inunction of clarified butter and with restraint of voice, &c., let him "privately" or in secret, "approach her, clad in a white robe, and pure in her conduct," that is, restraining her mind, speech, and gesture, "once" at a time, until pregnancy ensue.

12. The intercourse of the widow with her husband's kinsman is a nominal marriage.

12. These espousals are nominal, and a mere part of the form in which an authorized widow shall be approached ; like the inunction of clarified butter and so forth. They do not indicate her becoming the wedded wife of her brother-in-law.

Annotations.

and the prohibition are consequently not equal ; and therefore an option is not inferred. *Subód'hiní.*

12. *These espousals are nominal.*] The notion is this : as an inunction of clarified butter, and other observances, are prescribed as mere forms in approaching an authorized widow ; so these espousals are a mere part of that intercourse, and not a principal and substantive act, whence the parties might be supposed to become a married couple. *Subód'hiní* and BA'LAM-BHAT'T'A.

For the woman cannot become a lawful wedded wife, being twice-married. BA'LAM-BHAT'T'A.

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* MENU, 9. 69.—70.

13. The issue belongs to the husband; or, by special agreement, to both.

13. Therefore the offspring, produced by that intercourse, appertains to the original husband, not to the brother-in-law. But, by special agreement, the issue may belong to both.

SECTION XI

Sons by birth and by adoption.

1. Sons by birth and by adoption are described by YA'JNYAWALCYA.
1st. The legitimate son.
2nd. Son of an appointed daughter.
3rd. Son of the wife.
4th. Son of hidden origin.
5th. Son of an unmarried woman.
6th. Son of a twice-married woman.

1. A DISTRIBUTION of shares, among sons equal or unequal in class, has been explained. Next, intending to show the rule of succession among sons principal and secondary, the author previously describes them. "The "legitimate son is one procreated on the "lawful wedded wife. Equal to him is the "son of an appointed daughter. The son "of the wife is one begotten on a wife by a "kinsman of her husband, or by some other "relative. One, secretly produced in the house, is a son of "hidden origin. A damsel's child is one "born of an unmarried woman: he is con-"sidered as son of his maternal grandsire. "A child, begotten on a woman whose [first] "marriage had not been consummated, or on one who had "been deflowered [before marriage], is "called the son of a twice-married woman. "He, whom his father or his mother give

Annotations.

13. *Therefore the offspring, &c.*] The child is not a legitimate son *(aurasa)* of both parents; but is *(cshétraja)* son of the soil or wife, and appertains to the husband or owner of the soil, provided no agreement were made to this effect: 'the offspring, here produced, shall belong to us both.' But, if such a stipulation exist, he is son of both. *Subód'hiní* and BA'LAM-BHAT'T'A.

He is not legitimate son *(aurasa)* of the natural father, but similar to a legitimate son; as will be made evident in the sequel.* BA'LAM-BHAT'T'A.

1. *Son of his maternal grandsire.*] In the numerous quotations of this passage, some read *sutah* "son," others *smrĭtah* "called," and others again *matah* "considered." The sense is not materially affected by these differences; as either term, being not expressed, must be understood.

* Vide Sect. 11. § 4.

7th. Son given. 8th. Son bought. 9th. Son made. 10th. Son self-given. 11th. Son of a pregnant bride. 12th. Son deserted.

"for adoption, shall be considered as a son "given. A son bought is one who was "sold by his father and mother. A son "made is one adopted by the man himself. "One, who gives himself, is self-given. A "child accepted, while yet in the womb, is "one received with a bride. He, who is "taken for adoption, having been forsaken "by his parents, is a deserted son."*

2. Exposition of the text.

2. The issue of the breast (*uras*) is a legitimate son (*aurasa.*) He is one born of a legal wife. A woman of equal tribe, espoused in lawful wedlock, is a legal wife; and a son, begotten [by her husband†] on her, is a true and legitimate son; and is chief in rank.

Legitimate son.

Annotations.

2. *A son, begotten on a woman of equal tribe.*] In fact, it is not to be so understood. For it contradicts the author's own doctrine, since he includes the *Múrd'hávasicta* and others, born in the direct order of the tribes, among legitimate issue (§ 41.) They are not sons begotten on a woman of equal tribe: and, if issue by women of different tribes be not deemed legitimate, being considered as born of wives whom it was not lawful to marry, then it might follow, that other persons would take the heritage, although such sons existed. Hence the mention of a wife equal by tribe intends only the preferableness [of her or her offspring:] and the restriction, that she be a lawful wife, excludes the *cshétraja* or issue of the soil, and the rest. *Víramitródaya.*

The son by a woman of equal tribe espoused in any of the irregular forms of marriage (*A'sura, &c.*) is a legitimate son: and the sons of a *Bráhman'a*, by wives espoused in the direct order of the classes (*Cshátriya, &c.*) denominated the *Múrd'hávasicta*, the *Ambasht'ha*, and the *Páras'ava* or *Nishada*; and the sons of a *Cshátriya* by wives of the *Vais'ya* or *S'údra* tribe, named the *Mahishya* and the *Ugra*; and the son of a *Vais'ya* by a *S'údra* woman, called the *Caran'a*; are all legitimate sons. VIS'WE'S'WARA-BHAT'T'A in the *Madana-Párijáta.*

By the term "lawful" is excluded a woman espoused by one to whom such marriage was not permitted: therefore the sons by women of superior tribe are not legitimate; and, for this purpose, the word "lawful" has been introduced into the text (§ 1.) A lawful wife for a man of a regenerate tribe is a woman of a regenerate tribe; and, for a *S'údra* man, a *S'údra* woman. For want of a wife of preferable description, one analogous is allowed. Consequently it is not indispensable, that the wife be of the preferable description. Even a *S'údra* woman may be the wife of a regenerate man; and her issue is legitimate, as will be shown. BA'LAM-BHAT'T'A.

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* YA'JNYAWALCYA, 2. 129.—133.

† BA'LAM-BHAT'T'A directs this to be supplied in conformity with passages of VISHN'U (15. 2.), and MENU (9. 166.)

3. Son of an appointed daughter, described by VASISHT'HA;

3. The son of an appointed daughter (*putricá-putra*) is equal to him; that is, equal to the legitimate son. The term signifies son of a daughter. Accordingly he is equal to the legitimate son; as described by VASISHT'HA: "This damsel, who has no brother, I will give "unto thee, decked with ornaments: the son, who may be "born of her, shall be my son."* Or that term may signify

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Annotations.

3. *Equal to the legitimate son.*] The daughter appointed to be a son, and the son of an appointed daughter, are either of them equal to the legitimate son. VIS'WE'S'WARA in the *Madana-Párijáta.*

Since the son of an appointed daughter is son of legitimate female issue, therefore he is equal to a legitimate son: but he is not literally a legitimate son, being one remove distant. VIS'WE'S'WARA in the *Subód'hiní.*

Or that term may signify, &c.] It may signify a daughter who becomes by appointment a son; that is, who is put in place of a son. Although she be legitimate, yet being female, she is merely equal to a son. *Víramitródaya.*

"Equal to him," equal to the legitimate son, is the *putricá-putra* or daughter appointed to be a son: for, since all the terms of the definition of a legitimate son, excepting sex, are applicable to her, she is similar to him. APARA'RCA.

The *Putricá-putra* is of four descriptions. The first is the daughter appointed to be a son. She is so by a stipulation to that effect. The next is her son. He obtains, of course, the name of 'son of an appointed daughter,' without any special compact. This distinction, however, occurs: he is not in place of a son, but in place of a son's son, and is a daughter's son. Accordingly he is described as a daughter's son in the text of S'ANC'HA and LIC'HITA: "An "appointed daughter is like unto a son; as PRA'CHE'TASA has declared: her "offspring is termed son of an appointed daughter: he offers funeral oblations to "the maternal grandfathers and to the paternal grandsires. There is no dif-"ference between a son's son and a daughter's son in respect of benefits con-"ferred." The third description of son of an appointed daughter is the child born of a daughter who was given in marriage with an express stipulation in this form "the child, who shall be born of her, shall be mine for the purpose "of performing my obsequies."† He appertains to his maternal grandfather as an adopted son. The fourth is a child born of a daughter who was given in marriage with a stipulation in this form: "The child, who shall be born of her, "shall perform the obsequies of both." He belongs, as a son, both to his natural grandfather and to his maternal grandfather. But, in the case where she was in thought selected for an appointed daughter,‡ she is so without a compact, and merely by an act of the mind. HE'MA'DRI.

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* VASISHT'HA, 17. 16. † MENU, 9. 127. ‡ Ibid., 9. 136.

and daughter appointed to be a son;

a daughter becoming by special appointment a son. Still she is only similar to a legitimate son; for she derives more from the mother than from the father. Accordingly she is mentioned by VASISHT'HA as a son, but as third in rank: "The appointed daughter is considered to be the third description of sons."*

as also described by VASISHT'HA.

4. Son of two fathers. (Sect. 10.)

4. The son of two fathers (*dwyámushyáyan'a*)† is inferior to the natural father's legitimate son, because he is produced in another's soil.

5. Son of the wife.

5. A child, begotten by another person, namely, by a kinsman, or by a brother of the husband, is a wife's son (*cshétraja.*)

Annotations.

The son of the appointed daughter belongs in general only to the maternal grandfather: but, by special compact, to the natural father also. Thus YAMA says: "Let the son of an appointed daughter perform the obsequies "of his maternal ancestors exclusively: but, if he succeed to the property of "both, let him perform the obsequies of both." Accordingly this child also is denominated *dwyámushyayan'a* or son of two fathers. BA'LAM-BHAT'T'A.

"*The appointed daughter is the third description of sons.*"] "For she, who has no brother, reverts to her male ancestors and obtains a renewed filiation." VASISHT'HA. ‡

The adopted daughter is counted by VASISHT'HA as the third: not by YA'JNYAWALCYA. *Subód'hiní.*

MIT'RA-MIS'RA reads second instead of third; against the authority of the Institutes and of every compiler who has cited this passage.

4. *Is inferior to the legitimate son.*] He is similar to the son of the body. BA'LAM-BHAT'T'A.

Is not the son of two fathers the offspring of his natural father? Is he then a legitimate son? or one or other of the various descriptions of adoptive and secondary sons? Anticipating this question, the author says: "He is not different from him;" he is equal to a son of the body. *Subód'hiní.*

The commentary last cited reads *ávis'ishta* 'not different' instead of *apacrísht'a* 'inferior.' Both readings are noticed by BA'LAM-BHAT'T'A.

5. *A child, begotten by another person .... is a wife's son.*] There are two descriptions of *cshétraja* or wife's son; the first of them is son of both fathers (*dwipitrica*,) the other is adopted son of the wife's husband. *Víramitródaya.*

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* VASISHT'HA, 17. 11. † Vide Sect. 10. ‡ VASISHT'HA, 17. 15

6. The son of hidden origin (*gú'd'haja*) is one secretly brought forth in the husband's house. By excluding the case of a child begotten by a man of inferior or superior tribe, this must be restricted to an instance where it is not ascertained who is the father, but it is certain that he must belong to the same tribe.

6. Son of hidden origin.

7. A damsel's child (*cánína*) is the offspring of an unmarried woman by a man of equal class (as restricted in the preceding instance): and he is son of his maternal grandfather,

7. Son of an unmarried woman;

Annotations.

A son begotten, under a formal authority, by a kinsman being of equal class, or by another relative, is a wife's son. VIS'WE'S'WARA in the *Madana-Párijáta*.

6. *He must belong to the same tribe.*] A child secretly conceived by a woman, in her husband's house, from a man of the same tribe, but concerning whom it is not certainly known who the individual was, is named a son of concealed origin. The ignorance as to the particular person must be the husband's, not the wife's: and the knowledge of his equality in tribe may be obtained through her; for surely she must know who he is. But, if she really do not know his tribe, having been secretly violated by a stranger [in a dark night,*] then the child bears the name of a son of hidden origin, but is not so fit a son as the one before described. VIS'WE'S'WARA in the *Madana-Párijáta*.

In such circumstances, the child must be abandoned, say others. BA'LAM-BHAT'T'A.

Since the natural father is not known, the child belongs to the same tribe with his mother. But, if there be a suspicion, that he was begotten by a man of inferior tribe, he is contemned. VA'CHESPATI MIS'RA in the *S'rádd'ha-chintáman'i*.

A son, who is born of the wife, and concerning whom it is not certainly known who is the natural father, is adoptive son of the mother's husband, and called son of concealed origin. Being son of the adoptive father's own wife and begotten on her by another man, he is similar to the son of the wife, and therefore described after him. APARA'RCA.

7. *By a man of equal class.*] As the son before described must be one begotten by a man of like tribe, so must this son also be the offspring of a man of equal class. "Damsel" does not here signify unmarried only: for, even with that import, the term is frequently used in the sense of 'unconnected with man.' But it signifies a woman with whom a regular marriage has not been consummated. BA'LAM-BHAT'T'A.

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* BA'LAM-BHAT'T'A.

provided she be unmarried and abide in her father's house. But, if she be married, the child becomes son of her husband. So MENU intimates; "A son, whom "a damsel conceives secretly in the house "of her father, is considered as the son of her husband, and "denominated a damsel's son, as being born of an unmarried "woman."*

described by MENU.

8. The son of a woman twice married is one begotten by a man of equal class, on a twice-married woman, whether the first marriage had or had not been consummated.

8. Son of a twice-married woman.

Annotations.

The meaning of the passage of the *Mitácshara* is this: "Unmarried" signifies one, whose nuptials have not been commenced; "married," whose nuptials are begun. The affix here implies an act begun and not past. For a child begotten by a paramour alike in class, on a woman whose marriage is complete, is a son of concealed origin. *Víramitródaya.*

The child, born of an unmarried woman, is denominated son of a damsel; and is considered by MENU and the rest as son of his maternal grandfather. Being produced in a soil which in some measure appertains to him, namely, his daughter, the child is similar to the son of concealed origin, and is therefore mentioned by YA'JNYAWALCYA next after him. APARA'RCA.

If the maternal grandfather have no male issue, then the damsel's son is deemed his son; if he have issue, then the child is son of the husband. If both be childless, he is adoptive son of both. *Párijáta* cited in the *Retnácara* and *S'udd'hi-vivéca.*

If either of them be destitute of male issue, the child is his son; but, if both be so, the child is son of both. BA'LAM-BHAT'T'A.

So MENU *intimates.*] The meaning of the passage cited from MENU is as follows: a young woman, betrothed, but whose nuptials have not been completed; and who is consequently a maiden, since she is not yet become the wife of her intended husband: a son (we say) borne by such a damsel is denominated a damsel's child, and is considered as son of the bridegroom; that is, of the person by whom she is espoused. Accordingly the condition "in the house of her father" is pertinent as an explanatory phrase: for, after marriage, she inhabits the house of her husband. *Víramitródaya.*

8. *Whether, &c.*] Whether the marriage had or had not been consummated by the first husband, and whether she have been forsaken by her husband in his life-time or be a widow. Such is the meaning. Accordingly, VISHN'U so declares: "He, whom a woman, either forsaken by her husband, or a widow, "and again becoming a wife by her own choice, conceived [by a second husband,] is called the son of a woman twice-married."† The child is son of the natural father: for the first husband's right to the woman is annulled by his death or relinquishment; and she has not been authorized to raise up issue to him; and she takes a second husband solely by her own choice. BA'LAM-BHAT'T'A.

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* MENU, 9. 172. † Ibid. 9. 175. Erroneously cited as a passage of VISHN'

9. Son given, described by MENU.

9. He, who is given by his mother with her husband's consent, while her husband is absent, [or incapable though present,*] or [without his assent†] after her husband's decease, or who is given by his

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Annotations.

There are two descriptions of twice-married women: the first is a woman whose marriage has not been consummated, but only contracted, and who is espoused by another man. The other is a woman who has been blemished by intercourse with a man, before marriage. The offspring of such a woman is *(pauner-bhava)* son of a twice-married woman. Accordingly it is so expressed in the text. *Víramitródaya.*

"A woman, whose marriage had not been consummated, and who is again espoused, is a twice-married woman. So is she, who had previous intercourse with another man, though she be not actually married a second time." VISHN'U.‡

A child begotten "on a woman, whose [first] marriage had not been consummated;" on the wife of an impotent man or the like, whether she have become a widow or not; or on his own wife "who had been deflowered;" who had been enjoyed by strangers, and who is taken back, and again espoused; the child (we say) begotten on such a woman, is called 'son by a woman twice-married.' The twice-married woman has been described in the first book [of YA'JNYAWALCYA's institutes.] APARA'RCA.

"Whether a virgin or deflowered, she who is again espoused with solemn rites, is a twice-married woman: but she, who deserts her husband and through lust co-habits with another man of the same tribe, is a self-guided woman." YA'JNYAWALCYA.||

There are two descriptions of women termed *anyapúrvá*§ or previously connected with another: namely, the *punerbhú* or woman twice-married, and the *swairiní* or self-guided and unchaste woman. The twice-married woman also is of two descriptions; according as she has or has not been deflowered. She, who is not a virgin, is blemished by her intercourse with man before the nuptial ceremony: she, who is yet a virgin, is blemished by the repetition of the ceremony of marriage. But one who deserts the husband of her youth, and through desire co-habits with another man of the same tribe, is a self-guided woman *(swairin'í)*. *Mitácshara.*¶

A woman, who, having been married, whether she be yet a virgin or not, is again espoused in due form by her original husband or by another, is a twice-married woman. She is so described by MENU: "If she be still a virgin, or if she left her original husband and return to him, she may again perform the marriage ceremony with her second [or, in the latter case, her original] husband:"** and by VASISHT'HA, "She, who, having deserted the

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* BA'LAM-BHAT'T'A. † Ibid. ‡ VISHN'U, 15. 8.—9.
|| YA'JNYAWALCYA, 1. 68. § Same with *Parapúrvá* See MENU, 5. 163
¶ On YA'JNYAWALCYA, 1. 68 ** MENU. 9. 176

father, or by both, being of the same class with the person to whom he is given, becomes his given son *(dattaca.)* So

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Annotations.

husband to whom she was married in her youth, and having co-habited with others, returns to his family, is a twice-married woman. Or she, who deserts a husband impotent, degraded, or insane, and marries another husband, or does so after the death of the first, is a twice-married woman."* The repetition of the nuptial ceremony constitutes her a twice-married woman. But she, who leaves her husband and through desire co-habits, without marriage, with a man of the same tribe, is a self-guided woman. APARA'RCA.

9. *He, who is given by his mother with her husband's consent.*] VASISHT'HA says, "Let not a woman either give or accept a son, unless with the assent of "her husband."† He had before said "Man, produced from virile seed and "uterine blood, proceeds from his father and his mother, as an effect from its "cause. Therefore both his father and his mother have power to give, to sell, "or to abandon their son."‡

Concerning the mother's authority to give away her son, when she is a widow, see a subsequent note. In regard to a widow's power of adopting a son, there is much diversity of opinions. VA'CHESPATI MIS'RA, who is followed by the *Mait'hila* school, maintains that neither a woman, nor a *S'údra*, can adopt a *dattaca* or given son; because the prescribed ceremony (§ 13.) includes a sacrifice, which they are incapable of performing. This difficulty may be obviated by admitting a substitute for the performance of that ceremony: and accordingly adoption by a woman, under an authority from her husband, is allowed by writers of the other schools of law. NANDA PANDITA, however, in his treatise on adoption, restricts this to the case of a woman whose husband is living, since a widow cannot, he observes, have her husband's sanction to the acceptance of a son. On the other hand, BA'LAM-BHAT'T'A contends, that a woman's right of adopting, as well as of giving, a son, is common to the widow and to the wife. This likewise is the opinion of the author of the *Vyavahára-mayúc'ha:* but, while he admits that a widow may adopt a son without her husband's previous authority, he requires, that she should have the express sanction of his kindred. Writers of the *Gaura* school, on the contrary, insist on a formal permission from the husband declared in his lifetime.

Being of the same class with the person to whom he is given.] Or being given to a person of the same class. The two readings, (*savarn'áya* in the dative, or *savarn'ó yah* in the nominative,) both noticed by the commentator BA'LAM-BHAT'T'A, give the same sense.

The adopted son must be of the same tribe with the giver or natural parent as well as with the adoptive parent, according to the remark of APARA'RCA cited with approbation by NANDA PANDITA in his treatise on adoption.

Becomes his given son.] The son given *(dattaca,* or *dattrima)* is of two sorts; 1st, simple; 2nd, son of two fathers *(dwyámushyáyana.)* The first is one

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* VASISHT'HA, 17. 18.—19. † Ibid., 15. 4. ‡ Ibid., 15. 1.—2.

MENU declares : "He is called a son given *(dattrima,)* "whom his father or mother affectionately gives as a son, "being alike [by class,] and in a time of distress ; confirm- "ing the gift with water."*

10. Distress is requisite to justify a parent in giving away his offspring.

10. By specifying distress, it is intimated, that the son should not be given unless there be distress. This prohibition regards the giver [not the taker.†]

Annotations.

bestowed without any special compact ; the last is one given under an agreement to this effect, " he shall belong to us both." *Vyavahara-mayúc'ha.*

" *Whom his father or mother gives.*"] ME'D'HA'TIT'HI reads and interprets "whom his father *and* mother give;" (inserting the conjunctive particle *cha* instead of the disjunctive *vá.*) BA'LAM-BHAT'T'A condemns that reading ; and infers from the disjunctive particle and dual number in the text, that three cases are intended : viz., 1st, the mother may give her son for adoption with her husband's consent, if he be absent or incapable ; and without it, if he be dead or the distress be urgent ; 2nd, the father may give away his son without his wife's consent, if she be dead, or insane, or otherwise incapable ; but, with her consent, if she reside in her own father's house ; 3rd, the father and mother may conjointly give away their son, if they be living together.

" *Whom his father or mother affectionately gives.*"] Amicably : not from avarice or intimidation. In the *Víramitródaya*, the word is expressly stated to be used adverbially : but BA'LAM-BHAT'T'A considers it as an epithet of the son to be adopted, and as implying, that the adoption is not to be made against his will or without his free consent.

" *Being alike.*"] This is interpreted by ME'D'HA'TIT'HI as signifying 'alike, 'not by tribe, but by qualities suitable to the family : accordingly a *Cshátriya*, 'or a person of any other inferior class, may be the son given *(dattaca)* of a '*Bráhman'a.*' BA'LAM-BHAT'T'A and the author of the *Mayúc'ha* censure this doctrine : since evey other authority concurs in restricting adoption to the instance of a person of the same tribe.

10. *By specifying distress.*] "Distress" is explained in the *Pracás'a* cited by CHAN'D'E'S'WARA, 'inability [of the natural father] to maintain his 'offspring.' NANDA PANDITA, in his treatise on adoption, expounds it as intending the necessity for adoption arising from the want of issue. But BA'LAM-BHAT'T'A rejects this, and supports the other interpretation ; explaining the term as signifying 'famine or other calamity.'

This prohibition regards the giver.] If he give away his son when in no distress, the blame attaches to him, not to the taker. BA'LAM-BHAT'T'A.

* MENU, 9. 168. † *Subód'hini* and BA'LAM-BHAT'T'A.

11. The person must not be an only son: so VASISHT'HA.

11. So an only son must not be given [nor accepted.*] For VASISHT'HA ordains "Let no man give or accept an only son."†

12. Nor the eldest son: according to MENU.

12. Nor, though a numerous progeny exist, should an eldest son be given: for he chiefly fulfils the office of a son; as is shown by the following text. "By the eldest son, as soon as "born, a man becomes the father of male issue."‡

13. The form to be observed in

13. The mode of accepting a son for adoption is propounded by VASISHT'HA: "A person, "being about to adopt a son, should take

Annotations.

11. *So an only son should not be given.*] Nor should such a son be accepted. The blame attaches both to the giver and to the taker, if they do so. BA'LAM-BHAT'T'A.

Let no man give or accept an only son."] "For he is [destined] to con-"tinue the line of his ancestors." Such is the sequel of VASISHT'HA's text. BA'LAM-BHAT'T'A.

13. *The mode of accepting a son . . . . is propounded by* VASISHT'HA.] RAGHUNANDANA, in the *Udvaha-tatwa*, has quoted a passage from the *Cálicá-purán'a*, which, with the text of VASISHT'HA,§ constitutes the groundwork of the law of adoption, as received by his followers. They construe the passage as an unqualified prohibition of the adoption of a youth or child whose age exceeds five years, and especially one whose initiation is advanced beyond the ceremony of tonsure. This is not admitted as a rigid maxim by writers in other schools of law; and the authenticity of the passage itself is contested by some, and particularly by the author of the *Vyavahára-mayúc'ha*, who observes truly, that it is wanting in many copies of the *Cálicá-purána*. Others, allowing the text to be genuine, explain it in a sense more consonant to the general practice, which permits the adoption of a relation, if not of a stranger, more advanced both in age and in progress of initiation. The following version of the passage conforms with the interpretation of it given by NANDA-PANDITA in the *Dattaca-mímánsá*. "Sons given and the rest, though sprung "from the seed of another, yet being duly initiated [by the adopter] under his "own family name, becomes sons [of the adoptive parent.] A son, having been "regularly initiated under the family name of his [natural] father, unto the cere-"mony of tonsure, does not become the son of another man. When indeed the "ceremony of tonsure and other rites of initiation are performed [by the "adopter] under his own family name, then only can sons given and the rest "be considered as issue: else they are termed slaves. After their fifth year, O "King, sons are not to be adopted. [But,] having taken a boy five years old, "the adopter should first perform the sacrifice for male issue."||

* BA'LAM-BHAT'T'A. † VASISHT'HA, 15. 3. ‡ MENU, 9. 106.
§ VASISHT'HA, 15. 1.—7. See preceding quotations. || *Cálicá-purán'a*. c. antepenult.

this adoption, is described by VASISHT'HA.

"an unremote kinsman or the near relation "of a kinsman, having convened his kindred "and announced his intention to the king, "and having offered a burnt offering with recitation of the "holy words, in the middle of his dwelling."*

Annotations.

The *putréshti* or sacrifice for male issue, mentioned at the close of this passage, is a ceremony performed according to the instructions contained in the following text of the *Véda*: "He who is desirous of issue, should offer to "fire parent of male offspring, an oblation of kneaded rice roasted upon eight "potsherds; and to INDRA father of male offspring, a similar oblation of rice "roasted on eleven potsherds: fire grants him progeny; INDRA renders it old."

"*An unremote kinsman or the near relation of a kinsman.*"] This very obscure passage, which is variously read and interpreted, is here translated according to the elaborate gloss of NANDA PANDITA in his treatise entitled *Dattaca mímánsá*. Yet the same writer in his commentary on VISHN'U (15. 19.), citing this passage, gives the preference to another reading (*adúra-bánd'havam asannicrishtam éva*), which he expounds 'one whose whole kin-'dred dwell in a near country, and one not connected by affinity.' Which of these readings he has adopted in his commentary on the *Mitácshara*, is not ascertained. From a remark in the text (§ 14.), the author himself, VIJNYA'NE'S'-WARA, appears to have read and understood it differently: "Should take, in "the presence of his kin, one whose kinsmen are not remote." For copies of the *Mitácshara* exhibit the reading, *adúra-bánd'havam bandhu-sannicrishta éva*. But the commentator BA'LAM-BHAT'T'A seems to have read, as the *Dattaca mímánsá*, *bandhu-sannicrishtam* (in the accusative, instead of the locative;) though he explain the terms a little differently and transpose them: 'should 'take a kinsman nearly related (*band'hu-sannicrishtam*), as a brother's son or 'the like; but, on failure of such, one whose kinsmen are not remote (*adúra-'bánd'havam*); that is, any other person, whose father and the rest of his 'relations abide in a near country and whose family and character are 'consequently known.' The authors of the *Calpataru* and *Retnácara* read, like the scholiast of VISHN'U, *adúré band'havam asannicrishtam éva*, and thus interpret the passage 'Should take one whose kinsmen, namely, his maternal uncle 'and the rest, are near, [and whose name and tribe, with other particulars, 'can therefore be ascertained; or, for want of such kindred,†] even one whose 'good or bad qualities are not known, [or one whose kinsmen are not at hand; 'for his name and family may be ascertained by other sufficient proof.'‡]

"*Announced his intention to the king.*"] *Rájá* or king, usually signifying the sovereign, is here restricted, according to the remark of NANDA PANDITA, to the chief of the town or village.

"*In the middle of his dwelling.*"] The sequel of VASISHT'HA's text is as follows. "But, if doubt arise, let him set apart [without initiation and with a bare maintenance] like a *S'údra*, one whose kindred are remote. For it is declared [in the *Véda*] *Many are saved by one.*"§

* VASISHT'HA. 15. 5. † *Viváda-Retnácara.* ‡ Ibid. § VASISHT'HA. 15. 6.—7.

14. Explanation of the text.

14. An unremote kinsman.] Thus the adoption of one very distant by country and language, is forbidden.

15. The same rules applicable to adoption by purchase, &c.

15. The same [ceremonial of adoption*] should be extended to the case of sons bought, self-given, and made [as well as that of a son deserted†] : for parity of reasoning requires it.

16. Son bought; described by MENU.

16. The son bought (crita) is one who was sold by his father and mother, or by either of them : excepting as before an only son or an eldest one, and supposing distress and equality of tribe. As for the text of MENU, ("He is "called a son bought, whom a man, for the sake of having "issue, purchases from his father and mother : whether "the child be equal or unequal to him,"‡) it must be interpreted 'whether like or unlike in qualities ;' not in class : for the author concludes by saying "This law is propounded "by me, in regard to sons equal by class."§

17. Son made.

17. The son made (critrima) is one adopted by the person himself, who is desir-

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Annotations.

15. *The same ceremonial.*] Excepting the sacrifice or burnt offering. However, even that is to be performed at the adoption of a son self-given. BA'LAM-BHAT'T'A.

16. *As for the text of* MENU, *&c.*] S'U'LAPA'N'I, on the other hand, expounds YA'JNYAWALCYA by MENU, and admits the inequality of tribe. 'A 'child, sold by his father and mother, and received for adoption, is a son bought. 'He may be of dissimilar tribe : for the text [of MENU] expresses "equal or 'unequal."|| CHAN'D'E'S'WARA quotes the following discordant interpretations : '"Equal;" belonging to the same tribe; or, if that be not practicable, one un-'equal, or not appertaining to the same tribe.' So the *Párijáta*.¶ But the author of the *Pracás'a* observes, 'Though the text expresses "unequal," yet a 'child of a superior tribe must not be taken as a son, by a man of inferior 'tribe; nor one of inferior class, by a man of a higher tribe. And the 'words "equal or unequal," as interpreted by ME'D'HA'TIT'HI, are relative to 'similarity in respect of qualities.'**

17. *The son made.*] One bereft of father and mother and belonging to the same tribe with the adopter, and by him adopted, being enticed to acquiesce by the show of wealth, is a son made by adoption. VIS'WE'S'WARA in the *Madana-Párijáta*.

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* *Subód'hiní.* † BA'LAM-BHAT'T'A. ‡ MENU, 9. 174.
§ YA'JNYAWALCYA, 2. 134. Vide § 37. || *Dípacalica* on YA'JNYAWALCYA.
¶ Not the *Madana-párijáta*, which gives the contrary interpretation.
** *Viváda Retnácara.*

ous of male issue ; being enticed by the show of money and land, and being an orphan without father or mother. for, if they be living, he is subject to their control.

18. Son self-given.

18. The son self-given is one, who, being bereft of father and mother, or abandoned by them [without cause,*] presents himself, saying "Let me become thy son."

19. Son of a pregnant bride.

19. The son, received with a bride, is a child, who, being in the womb, is accepted when a pregnant bride is espoused. He becomes son of the bridegroom.

Annotations.

The form, to be observed, is this. At an auspicious time, the adopter of a son, having bathed, addressing the person to be adopted, who has also bathed, and to whom he has given some acceptable chattel, says, "Be my son." He replies, "I am become thy son." The giving of some chattel to him arises merely from custom. It is not necessary to the adoption. The consent of both parties is the only requisite ; and a set form of speech is not essential. RUDRAD'HARA in the *S'udd'hivivéca.*

18. *The son self-given.*] He who, unsolicited, gives himself, saying, "Let me become thy son," is called a son self-given *(swayandatta.)* APARA'RCA.

Here also it is requisite, that he belong to the same tribe with his adoptive father. VIS'WE'S'WARA in the *Madana-Párijáta.*

"He who has lost his parents, or been abandoned by them without cause, "and offers himself to a man as his son, is called a son self-given." MENU.†

Being abandoned by his father and mother without any sufficient cause, such as degradation from class or the like: but merely from inability to maintain him during a dearth, or for a similar reason. *Víramitródaya.*

19. *The son received with a bride.*] If a woman be married while pregnant, the child born of that pregnancy is a son received with a bride *(sahó'd'ha:)* provided the child were begotten by a man of equal class. VIS'WE'S'WARA in the *Madana-Párijáta.*

He is distinguished from the son of an unmarried damsel, because the conception preceded the betrothing of the mother ; and from the son of concealed origin, because the natural father is known. Then what difference is there? for the son of the unmarried damsel was conceived before troth plighted.

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* BA'LAM-BHAT'T'A. † MENU, 9. 178.

20. Son deserted.

20. A son deserted *(apavidd'ha)* is one who, having been discarded by his father and mother, is taken for adoption. He is son of the taker. Here, as in every other instance, he must be of the same tribe with the adoptive father.

21. Order in which these different sons succeed to an inheritance: as declared by YA'JNYAWALCYA.

21. Having premised sons chief and secondary, the author explains the order of their succession to the heritage: "Among these, "the next in order is heir, and pre-"sents funeral oblations on failure of the "preceding."*

22. Interpretation of the text.

22. Of these twelve sons abovementioned, on failure of the first respectively, the next in order, as enumerated, must be considered to be

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Annotations.

True: yet there is a great difference, since one is born before marriage, and the other after marriage. This son received with a bride is son of him who takes the hand of the pregnant woman in marriage: for the maternal grandfather's right is divested by his giving away the child with the mother. NANDA-PANDITA in the *Vaijayantí* on VISHN'U.

Since the bridegroom is specified as the adoptive father, the child does not belong to his natural father. Although the religious ceremony of marriage do not take place in the case of a pregnant woman, since a text of law restricts the prayers of the marriage ceremony to the nuptials of virgins, and forbids their use in the instance of women who are not virgins, as a practice which has become obsolete among mankind; and it would be inconsistent with a passage of the *Véd'a* [used at the nuptial ceremony as a prayer] expressing "the virgin worships the generous sun in the form of fire;" nevertheless the term "marry" [in the text of MENU†] intends a religious ceremony different from that, but consisting of burnt offerings, and so forth, according to the remark of the *Retnácara* and the rest. VA'CHESPATI MIS'RA in the *S'rádd'ha chintáman'i*.

20. *Discarded.*] Abandoned: not for any fault, but through inability to maintain him, or because he was born under the influence of the stars of the scorpion's tail,‡ or for any similar reason. BA'LAM-BHAT'T'A.

Since that, of which there is no owner, is appropriated by seizure or occupation, the child becomes son of him by whom he is taken. NANDA-PANDITA in the *Vaijayantí* on VISHN'U, 15. 24.

22. *Of these twelve sons.*] The various modes of adoption, added to the legitimate son by birth, raise the number of descriptions of sons to twelve, according to most authorities. That number is expressly affirmed by MENU,§ NA'REDA,|| VASISHT'HA,¶ VISHN'U,** &c. A passage is, however, quoted from

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* YA'JNYAWALCYA, 2. 133. † MENU, 9. 173.

‡ The birth of a son, while the moon is near the stars of *Múla* (the scorpion's tail), is dangerous to the father's life, according to *Indian* astrology; and, on this account, a son born under that influence is exposed or abandoned, if natural affection and humanity do not overcome superstition and credulity.

§ MENU, 9. 158. || NA'REDA, 13. 44. ¶ VASISHT'HA, 17. 11. ** VISHN'U, 15. 1.

the giver of the funeral oblation or performer of obsequies, and taker of a share or successor to the effects.

23. An appointed daughter shares with legitimate son; according to a passage of MENU.

23. If there be a legitimate son and an appointed daughter, MENU propounds an exception to the seeming right of the legitimate son to take the whole estate: "a daughter "having been appointed, if a son be after- "wards born, the division of the heritage "must in that case be equal: since there is no right of pri- "mogeniture for the woman."*

24. Others have a quarter of a share, as directed by VASISHT'HA.

24. So the allotment of a quarter share to other inferior sons, when a superior one exists, has been ordained by VASISHT'HA: "When a "son has been adopted, if a legitimate son be "afterwards born, the given son shares a "fourth part."† Here the mention of a son given is intended for an indication of others also, as the son bought, son

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Annotations.

DE'VALA, asserting the number of fifteen ("The descriptions of sons are ten and five") and VRĬHASPATI is cited as alleging the authority of MENU for thirteen: "Of the thirteen sons, who have been enumerated by MENU in "their order, the legitimate son and appointed daughter are the cause of lineage. "As oil is declared to be a substitute for liquid butter, so are eleven sons by "adoption substituted for the legitimate son and appointed daughter." NANDA-PANDITA, in his commentary on VISHN'U, observes, that 'the number of thir- 'teen specified by VRĬHASPATI, and that of fifteen by DE'VALA, intend sub-divi- 'sions of the species, not distinct kinds: consequently there is no contradic- 'tion; for those sub-divisions are also included in the enumeration of twelve.' It appears, however, from a comparison of texts specifying the various descriptions of sons, that the exact number (as indeed is acknowledged by numerous commentators and compilers) is thirteen; including the son by a *S'údra* woman. Vide § 30.

23. *If there be a son and an appointed daughter.*] So this passage is interpreted by the commentators VIS'WE'S'WARA and BA'LAM-BHAT'T'A. The original is, however, ambiguous, and might be explained 'if there be a legiti- 'mate son and a son of an appointed daughter.' BA'LAM-BHAT'T'A remarks, that this can only happen where a legitimate son is born after the appointment of a daughter.

24. *So the allotment of a quarter share.*] As the appointed daughter participates where there is a legitimate son; so do other sons likewise partake. *Subód'hini.*

The mention of a son given.] This is according to the reading of the text as here cited and in the *Víramitródaya* and CAMALA'CARA'S *Vivâda-Tândava.*

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* MENU. 9. 134. † VASISHT'HA 15. 8.

made by adoption, and [son self-given* and] the rest: for they are equally adopted as sons.

25. CA'TYA'YANA allots to them the same portion; provided they be of equal class: else, food and raiment only.

25. Accordingly CA'TYA'YANA says, "If a legitimate son be born, the rest are "pronounced sharers of a fourth part, provid-"ed they belong to the same tribe; but, if "they be of a different class, they are "entitled to food and raiment only."

26. The son of the wife, and sons given, bought, made, self-given, and discarded, are of equal class; the damsel's son, the son of hidden origin, son of a pregnant bride, and son of a twice-married woman, are of inferior rank.

26. "Those who belong to the same tribe," as the son of the wife, the son given and the rest [namely, the sons bought, made, self-given, and discarded,†] share a fourth part, if there be a true legitimate son: but those, who belong to a different class, as the damsel's son, the son of concealed origin, the son of a pregnant bride, and the son by a twice-married woman, do not take a fourth part, if there be a legitimate son: but they are entitled to food and raiment only.

27. A passage of VISHN'U, concerning these exceptionable sons, denies their participation.

27. "Exceptionable sons, as the son of an unmarried "damsel, a son of concealed origin, one "received with a bride, and a son by a twice-"married woman, share neither the funeral "oblation, nor the estate." This passage of VISHN'U‡ merely denies the right of those sons to a quarter share, if there be legitimate issue: but, if there be no legitimate son or other preferable claimant, even the child of an unmarried woman and the rest of the adoptive sons may succeed to the whole paternal estate, under the text before cited (§ 21.)

28. MENU allots to adopted sons a mere maintenance:

28. "The legitimate son is the sole heir of his "father's estate; but, for the sake of inno-"cence, he should give a maintenance to "the rest."§ This text of MENU must be

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Annotations.

But, in the *Calpataru*, *Retnácara*, *Chintáman'i*, &c., that restrictive term is wanting: *Sa chaturt'ha-bhága-bhágí syat*, instead of *Chaturt'ha-bhága-bhágí syád dattacah*.

25. *Sharers of a fourth part.*] This reading is followed in the *Madana-Párijáta Víramitródaya*, &c. But the *Calpataru*, *Retnácara*, and other compilations, read 'a third part.' Vide JÍMU'TA-VA'HANA. C. 10. § 13.

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* BA'LAM-BHAT'T'A. † *Subód'hiní* and *Párijáta*.

‡ It is not found in the Institutes of VISHN'U; but is cited from that author in the *Madana-Párijáta* and *Víramitródaya*, as in this place.

§ MENU, 9. 163

supposing their insubordination towards the legitimate son.

considered as applicable to a case, where the adopted sons (namely, the son given and the rest) are disobedient to the legitimate son, and devoid of good qualities.

29. He assigns a fifth or a sixth part to the son of the wife: according to his relative merits.

29. Here a special rule [different from CA'TYA'YANA'S*] is propounded by the same author (MENU) respecting the son of the wife: "Let the "legitimate son, when dividing the paternal "heritage, give a sixth part, or a fifth, of the "patrimony to the son of the wife."† The cases must be thus discriminated: if disobedience and want of good qualities be united, then a sixth part should be allotted. But, if one only of those defects exist, a fifth part.

30. Two classes of sons are distinguished by MENU: one inheriting from collaterals, and the other not.

30. MENU, having premised two sets of six sons, declares the first six to be heirs and kinsmen; and the last to be not heirs but kinsmen: "The true legitimate issue, the son of a "wife, a son given, and one made by adop- "tion, a son of concealed origin, and one "rejected [by his parents,] are the six heirs and kinsmen. "The son of an unmarried woman, the son of a pregnant "bride, a son bought, a son by a twice-married woman, a son "self-given, and a son by a *S'údra* woman, are six not heirs "but kinsmen."‡

31. Explanation of the text.

31. That must be expounded as signifying, that the first six may take the heritage of their father's collateral kinsmen (*sapin'd'as* and *samánódacas*) if there be no nearer heir;

Annotations.

28. *Applicable to a case where adopted sons (namely, the son given, &c.) are disobedient.*] It also relates to the damsel's son and the rest: for they are declared entitled to food and raiment only, if there be legitimate issue; and that must be supposed to be founded on the same authority with this text: but MENU has himself propounded a fifth or a sixth part for the son of the wife, if there be legitimate issue.§ *Víramitródaya.*

31. *The first six may take the heritage of collateral kinsmen: . . . . not so the last six.*] The sense of the two passages is, that if there be no nearer collateral kinsman, the first six inherit the property; but not the six last. *Subód'hiní.*

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* BA'LAM-BHAT'T'A. † MENU, 9. 164. ‡ Ibid. 9. 159—160. § Vide § 29

but not so the last six. However, consanguinity and the performance of the duty of offering libations of water and so forth, on account of relationship near or remote, belong to both alike.

32. Confirmed by a passage of MENU.

32. It must be so expounded; for the mention of a given son in the following passage is intended for any adopted or succedaneous son. "A given son must never claim the "family and estate of his natural father. The funeral "oblation follows the family and estate: but of him, who "has given away his son, the obsequies fail."*

Annotations.

However, consanguinity, &c.] ME'D'HA'TIT'HI interprets the text of MENU as signifying that 'the last six are neither heirs nor kinsmen.' But that interpretation is censured by CULLU'CA-BHAT'T'A; and is supposed by the commentator on the *Mitácshara* to be here purposely confuted.

32. *The mention of a given son is intended for any adopted son.*] The meaning, as here expressed, is this: the mention of a son given is in this place intended to denote any succedaneous son. Consequently, since it appears from the text, that adopted sons have a right of inheritance; but, according to the opponent's opinion, it appears from another passage, that they have not a right of succession; it might be concluded from such a contradiction, that the precepts have no authority: therefore, lest the text become futile, the interpretation, proposed by us, is to be preferred. *Subód'hini.*

Of him, who has given away his son, the obsequies fail.] This must be understood of the case where the giver has other male issue. *Subód'hini.*

But, if he have not, then even that son is competent to inherit his estate and to perform his obsequies; like the son of two fathers (Sect. 10 § 1): for a passage of S'A'TA'TAPA directs, "Let the given son present oblations to his "adoptive parent and to his natural father, on the anniversary of decease, and at "*Gayá*, and on other occasions; not, however, if there be other male issue." This, indeed, can only occur where the natural father is bereft of issue after giving away his son: since, at the time of the gift, it is forbidden to part with an only son (§ 11.) In this manner is to be understood the circumstance of a given son, as son of two fathers, conferring benefits on both. BA'LAM-BHAT'T'A.

If either the natural parent or the adoptive father have no other male issue, the *dwyámushyáyan'a* or son of two fathers shall present the funeral oblation to him and shall take his estate: but not so, if there be male issue. If both have legitimate sons, he offers an oblation to neither, but takes the quarter of a share allotted to a legitimate son of his adoptive father. *Vyavahára-mayúc'ha.*

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* MENU. 9. 142.

33. Sons of all descriptions may inherit from the father

33. All, without exception, have a right of inheriting their father's estate, for want of a preferable son: since a subsequent passage ("Not "brothers, nor parents, but sons, are heirs "to the estate of the father,"*) purposely affirms the succession of all subsidiary sons other than the true legitimate issue; and the right of the legitimate son is propounded by a separate text ("The legitimate son is "the sole heir of his father's estate;"†) and the word "heir" *(dáyada)* is frequently used to signify any successor other than a son.

34. Differences in the order of enumeration reconciled: as found in VASISHT'HA, &c.

34. The variation which occurs in the institutes of VASISHT'HA and the rest, respecting some one in both sets, must be understood as founded on the difference of good and bad qualities.

Annotations.

33. *The word "heir" is frequently used.*] An instance is cited in the text. It is part of a passage, of which the sequel has not been found. The words are "let him compel the heirs to pay."

34. *The variation which occurs in* VASISHT'HA, *&c.*] MENU, declaring the appointed daughter equal to the legitimate son, includes her under legitimate issue,‡ and proceeds to define the remaining ten succedaneous sons.§ But VASISHT'HA states the appointed daughter as third in rank;|| which is a disagreement in the order of enumeration. The same must be understood of other institutes of law;¶ which are here omitted for fear of prolixity. How then is the succession of the next in order on failure of the preceding reconcilable? The author proposes this difficulty with its solution. His notion of the mode of reconciling it is this: MENU, declaring that the first set of six sons by birth or adoption is competent to inherit from collateral kinsmen on failure of nearer heirs, but not so the second set, afterwards proceeds to deliver incidentally definitions of those various sons. It appears, therefore, to be a loose enumeration, and not one arranged with precision. Accordingly, MENU, in saying, "Let the inferior in order take the heritage,"** does not limit this very order, but intends one different in some respects: and the difference is relative to good and bad qualities. The same method must be used with the variations in other codes. Moreover, what is ordained by YA'JNYAWALCYA is consistent with propriety. For the true legitimate son and the son of an appointed daughter are both legitimate issue, and consequently equal. The son of the wife, a son of hidden origin, the son of an unmarried damsel, and a son by a twice-married woman, being produced from the seed of the adoptive father or from a soil appertaining to him, have the preference before the son given and the rest. The son received with a bride, being produced from soil which the adop-

* MENU, 9. 185. † Vide § 28. ‡ MENU, 9. 165.
§ Ibid., 9. 166.—178. || VASISHT'HA, 17. 14.
¶ As VISHN'U, 15. 2.—37. NA'REDA, 13. 44.—45. DE'VALA, &c. ** MENU, 9. 184.

35. And in GAUTAMA.

35. But the assignment of the tenth place to the son of an appointed daughter, in GAUTAMA'S text, is relative to one differing in tribe.

36. A nephew should be adopted, rather than a stranger or a distant relation.

36. The following passage of MENU, "if, among several brothers of the whole blood, one have a "son born, MENU pronounces them all "fathers of male issue by means of that son;"* is intended to forbid the adoption of others, if a brother's son can possibly be adopted. It is not intended to declare him son of his uncle: for that is inconsistent with the subsequent text; "brothers likewise and their sons, gentiles, cognates, &c."†

37. The foregoing rules of filiation are restricted to persons of the same tribe.

37. The author next adds a restrictive clause by way of conclusion to what had been stated: "This law is propounded by "me in regard to sons equal by class."‡

38. Not being applicable when the rank differs.

38. This maxim is applicable to sons alike by class, not to such as differ in rank.

39. Some adoptive sons are, however, included,

39. Here the damsel's son, the son of hidden origin, the son received with a bride, and a son by a twice-married woman, are deemed of like class, through their natural father,

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Annotations.

tive father accepts for his own, is placed in the second set by the authority of the text [or because the mother did not appertain to the adoptive father at the time when the child was begotten.§] The whole is therefore unexceptionable. *Subód'hiní.*

36. *That is inconsistent with the subsequent text.*] It is incompatible with a passage of YA'JNYAWALCYA declaratory of the nephew's right of succession after brothers. For, if he be deemed a son, because all the brethren are pronounced fathers of male issue by means of the son of a brother, he ought to inherit before all other heirs, such as the father and the rest, [who are in that passage preferred to him.] *Subód'hiní.*

The principle of giving a preference to the nephew, as the nearest kinsman, in the selection of a person to be adopted, is carried much further by NANDA-PANDITA in the *Dattaca-mímánsá*: and, according to the doctrine there laid down, the choice should fall on the next nearest relation, if there be no brother's son; and on a distant relation, in default of near kindred: but on a stranger, only upon failure of all kin. See § 13.

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* MENU, 9 182

† YA'JNYAWALCYA. 2. 136. Vide infra C. 2 Sect. 1. § 1.

‡ Ibid., 2 134

§ BA'LAM-BHAT'T'A

though not within the definition of tribe.

but not in their own characters : for they are not within the definition of tribe and class.

40. Legitimate issue, of a mixed class, inherits before adoptive sons.

40. Since issue, procreated in the direct order of the tribes, as the *Múrd'hávasicta* and the rest, are comprehended under legitimate issue, it must be understood, that, on failure of these also, the right of inheritance devolves on the son of the wife and the rest.

41. But the *S'údra's* son is restricted to a tenth, by a passage of MENU.

41. But the son by a *S'údra* wife, though legitimate, does not take the whole estate, even on failure of other issue. Thus MENU says, "But, whether the man have sons, or have "no sons, [by his wives of other classes,] no "more than a tenth part must be given to the son of the "*S'údra*."*

42. Interpretation of the text.

42. "Whether he have sons," whether he have male issue of a regenerate tribe ; "or have no sons," or have no issue of such a tribe ; in either case, upon his demise, the son of the wife or other [adoptive son,] or any other kinsman [and

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39. *They are not within the definition of tribe.*] For YAJNYAWALCYA having described the origin and distinctions of the tribes and classes, [viz., the *Múrd'hávasicta, Ambasht'ha, Nishúda, Máhishya, Ugra,* and *Carana:*] adds "This rule concerns the children of women lawfully married."† *Viramitródaya.*

Since these (viz., the damsel's son and the rest) are bastards ; born either in fornication or adultery, their exclusion from class, tribe, &c., has been ordained in the first book on religious observances. *Subód'hiní.*

41. *No more than a tenth part.*] Is not this wrong? for it has been declared, that the *S'údra's* son shall take a share in a distribution among sons of various tribes (Sect. 8. § 1); but it is here directed, that he shall have a tenth part. No: for the four shares of the *Bráhman'í's* son, with three for the *Cshátriya's* child, make seven; and, with two for the *Vais'yá's* offspring, make nine: adding that to one for the *S'údra's* son, the sum is ten. Thus there is no contradiction; for, in that instance also, his participation for a tenth part is ordained and the whole is unexceptionable. *Subód'hiní.*

* MENU. 9. 154

† YAJNYAWALCYA. 1. 93

heir,] shall give to the *S'údra's* son, no more than a tenth part of the father's estate.

43. The son of the *Cshátriya* or *Vais'yá* wife inherits in default of issue by a *Bráhman'i*.

43. Hence it appears, that the son of a *Cshátriya* or *Vais'yá* wife takes the whole of the property on failure of issue by women of equal class.

SECTION XII

Rights of a Son by a female Slave, in the case of a S'údra's *estate.*

1. In the instance of a *S'údra's* property, his son by a female slave inherits or participates; conformably to a passage of YA'JNYAWALCYA.

1. THE author next delivers a special rule concerning the partition of a *S'údra's* goods. "Even a "son begotten by a *S'údra* on a female slave, "may take a share by the father's choice. "But, if the father be dead, the brethren "should make him partaker of the moiety "of a share: and one, who has no brothers, "may inherit the whole property, in default "of daughter's sons."*

2. Interpretation of the text.

2 The son, begotten by a *S'údra* on a female slave, obtains a share by the father's choice, or at his pleasure. But, after [the demise of†] the father, if there be sons of a wedded wife, let these brothers allow the son of the female slave to participate for half a share: that is, let them give him half [as much as is the amount of one brother's‡] allotment. However, should there be no sons of a wedded wife, the

Annotations

43. *Hence it appears.*] It so appears from the text of MENU above cited (§ 41). BA'LAM-BHAT'T'A.

1. "*In default of daughter's sons.*"] Some interpret this 'on failure of 'daughters, and in default of their sons.' BA'LAM-BHAT'T'A.

* YA'JNYAWALCYA, 2. 134.—135.

† BA'LAM-BHAT'T'A.

‡ *Subód'hini* and BA'LAM-BHAT'T'A

son of the female slave take the whole estate, provided there be no daughters of a wife, nor sons of daughters. But, if there be such, the son of the female slave participates for half a share only.

3. But the son of a regenerate man by a female slave has a maintenance only.

3. From the mention of a *S'údra* in this place, [it follows, that] the son begotten by a man of a regenerate tribe on a female slave, does not obtain a share even by the father's choice, nor the whole estate after his demise. But, if he be docile, he receives a simple maintenance.

CHAPTER II.

SECTION I.

Right of the Widow to inherit the estate of one who leaves no male issue.

1. The subject of collateral succession is next considered.

1. THAT sons, principal and secondary, take the heritage, has been shown. The order of succession among all [tribes and classes*] on failure of them, is next declared.

2. Passage of YA'JNYAWALCYA on that subject.

2. "The wife, and the daughters also, both parents, "brothers likewise, and their sons, gen-"tiles, cognates, a pupil, and a fellow-"student: on failure of the first among "these, the next in order is indeed heir to the estate of one, "who departed for heaven leaving no male issue. This "rule extends to all [persons and†] classes."‡

Annotations.

2. "*Brothers likewise.*"] This is understood by BA'LAM-BHAT'T'A as signifying both brothers and sisters.

"*And their sons.*"] BA'LAM-BHAT'T'A understands the daughters of brothers, as well as their sons.

* *Subód'hiní* † Ibid., &c. ‡ YA'JNYAWALCYA, 2. 136. 137

3. Interpretation of it. The heir of a person, who leaves no male issue, is the first in succession, according to the enumeration in the text.

3. He, who has no son of any among the twelve descriptions above stated (C. 1. Sect. 11.) is one having 'no male issue.' Of a man, thus leaving no male progeny, and going to heaven, or departing for another world, the heir, or successor, is that person, among such as have been here enumerated; (viz., the wife and the rest,) who is next in order, on failure of the first mentioned respectively. Such is the construction of the sentence.

4. The rule is the same in all tribes and classes.

4. This rule, or order of succession, in the taking of an inheritance, must be understood as extending to all tribes, whether the *Múrd'hávasicta* and others in the direct series of the classes, or *Súta* and the rest in the inverse order; and as comprehending the several classes, the sacerdotal and the rest.

5. The widow is first entitled to the succession.

5. In the first place, the wife shares the estate. "Wife" *(patní)* signifies a woman espoused in lawful wedlock; conformably with the etymology of the term as implying a connexion with religious rites.

6. Passages of MENU.

6. *Vrïdd'ha*-MENU also declares the widow's right to the whole estate. "The

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Annotations.

3. *Such is the construction of the sentence.*] The commentator BA'LAMBHAT'T'A disapproves the reading which is here followed. The difference is, however, immaterial.

5. *Conformably with the etymology.*] A rule of grammar is cited in the text, viz., PA'N'INI, 4. 1. 35.

The author of the *Subód'hiní* remarks, that the meaning of the grammatical rule cited from PA'N'INI is this: *Patní* 'wife' anomalously derived from *Pati* 'husband,' is employed when connexion with religious rites is indicated: for they are accomplished by her means, and the consequence accrues to him. The purport is, that a woman, lawfully wedded, and no other, accomplishes religious ceremonies: and therefore one espoused in lawful marriage is exclusively called a wife *(patní.)* Although younger wives are not competent to assist at sacrifices or other religious rites, if an eldest wife exist, who is not disqualified; still, since the rest become competent in their turns, on failure of her, or even during her life, if she be afflicted with a lasting malady or be degraded for misconduct, they possess a capacity for the performance of religious ceremonies: and here such capacity only is intended. Or else marriage may be exclusively meant by religious rites: for offerings are made to deities at that ceremony; and such also is a sacrifice or solemn rite. Thus likewise, a woman lawfully espoused, and no other, is a wife *(patní.)*

widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain [his] entire share."* *Vrĭhad-*

VISHN'U,

VISHN'U likewise ordains it: "The wealth "of him, who leaves no male issue, goes to "his wife; on failure of her, it devolves on daughters; if "there be none, it belongs to the father; if he be dead, it "appertains to the mother."† So does

CA'TYA'YANA,

CA'TYA'YANA: "Let the widow succeed to "her husband's wealth, provided she be chaste; and, in "default of her, the daughter inherits if unmarried.‡" And again, in another place: "The widow, being a woman of "honest family, or the daughters, or on failure of them the "father, or the mother, or the brother, or his sons, are pro-

and VRĬHASPATI concur in this.

"nounced to be the heirs of one who leaves "no male issue."§ Also VRĬHASPATI: "Let "the wife of a deceased man, who left no male issue, take "his share, notwithstanding kinsmen, a father, a mother, or "uterine brethren, be present."

7. Passages, adverse to the widow's claim, likewise

7. Other texts, of a contrary import, cited from NA'REDA,

occur. Thus NA'REDA has stated the succession of brothers, though a wife be living; and has directed the assignment of a maintenance only to widows. "Among "brothers, if any one die without issue, or enter a religious "order, let the rest of the brethren divide his wealth, except "the wife's separate property. Let them allow a mainte- "nance to his women for life, provided these preserve "unsullied the bed of their lord. But, if they behave other-

MENU,

"wise, the brethren may resume that "allowance."|| MENU propounds the succession of the father, or of the brother, to the estate of one who has no male offspring: "Of him, who leaves no son, "the father shall take the inheritance, or the brothers."¶ He likewise states the mother's right to the succession, as well as the paternal grandmother's: "Of a son dying childless, "the mother shall take the estate: and, the mother also being

S'ANC'HA,

"dead, the father's mother shall take the "heritage."** S'ANC'HA also declares the suc-

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* See a note on this passage in JÍMUTA-VA'HANA, Ch. 11. Sect. 1. § 7.

† VISHN'U, 17. 4.—7.

‡ Vide infra. Sect. 2. § 2.

§ In the *Víramitródaya*, this is cited as the text of a different author; but the commentator on the *Mitácshara* treats it as a further passage from the author before cited.

|| NA'REDA, 13. 25 26.

¶ MENU, 9. 185. Vide Sect. 4. § 1.

** Ibid. 9. 217. Vide Sect. 4. § 2. & Sect. 5. § 2.

cessive rights of brothers, and of both parents, and lastly, of the eldest wife: "The wealth of a man, who departs for "heaven, leaving no male issue, goes to his brothers. If there "be none, his father and mother take it: or his eldest wife."

and CA'TYA'YANA.

CA'TYA'YANA too says, "If a man die separate from his co-heirs, let his father take "the property on failure of male issue; or successively the "brother, or the mother, or the father's mother."

8. D'HA'RE'S'WARA's mode of reconciling the contradiction.

The rule for the widow's succession concerns the widow of a separated brother seeking to raise up offspring to him.

8. The application of these and other contradictory passages is thus explained by D'HA'RE'S'WARA: 'The rule, deduced from the texts '[of YA'JNYAWALCYA, &c.*], that the wife 'shall take the estate, regards the widow of 'a separated brother: and that, provided 'she be solicitous of authority for raising up 'issue to her husband. Whence is it inferred, that a widow succeeds to the estate, 'provided she seek permission for raising up issue, but not 'independently of this consideration?' From the text above cited, "Of him, who leaves no son, the father shall take "the inheritance;"† and other similar passages [as NA'REDA's, &c.‡] For here a rule of adjustment and a reason for it must be sought; but there is none other. Besides, it is

This is confirmed by GAUTAMA.

confirmed by a passage of GAUTAMA: "Let "kinsmen allied by the funeral oblation, "by family name, and by descent from the "same patriarch, share the heritage; or the widow of a "childless man, if she seek to raise up offspring to him."§

Annotations.

8. *And other contradictory passages.*] Alluding to the texts of GAUTAMA and DE'VALA subsequently quoted. BA'LAM-BHAT'T'A.

The rule deduced from the texts.] From those of YA'JNYAWALCYA (§ 2.), *Vrĭdd'ha*-MENU, VISHN'U, CA'TYA'YANA, and VRĬHASPATI (§ 6.) *Subód'hiní*, &c.

"*If she seek . . . . offspring.*"] The particle *(vá.)* is understood by the author, by whom the passage is here cited, in the conditional sense, as appears from the interpretation of the text in the next paragraph (§ 9.); according to the remark of the commentators on the *Mitácshara*. But the scholiast of GAUTAMA takes it in its usual disjunctive sense: and the text is differently interpreted by the author of the *Mitácshara* himself (§ 18.)

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* *Subód'hiní.* † MENU, 9. 185. Vide supra. § 7.

‡ BA'LAM-BHAT'T'A. § GAUTAMA, 28. 19.—20 Vide infra. § 18

9. Interpretation of the text.

9. 'The meaning of the text is this: persons, connect'ed by a common oblation, by race, or by 'descent from a patriarch, share the effects 'of one who leaves no issue: or his widow 'takes the estate, provided she seek progeny.'

10. Confirmed by passages of MENU, which show, that the property goes to the son borne by the widow.

10. 'MENU likewise shows by the following passage, 'that, when a brother dies possessed of 'separate property, the wife's claim to the 'effects is in right of progeny, and not in any 'other manner. "He, who keeps the estate '"of his brother and maintains the widow, '"must, if he raise up issue to his brother, '"deliver the estate to the son.'"* So, in the case of undivided property likewise, the same author says, "Should a "younger brother have begotten a son on the wife of his elder "brother, the division must then be made equally: thus is "the law settled."†

11. VASISHT'HA also hints, that the widow's succession is in contemplation of her issue.

11. 'VASISHT'HA also, forbidding an appointment to 'raise up issue to the husband, if sought 'from a covetous motive ("An appointment '"shall not be through covetousness;"‡) 'thereby intimates, that the widow's succes'sion to the estate is in right of such an 'appointment, and not otherwise.'

12. Else she has a maintenance only; according to NA'REDA.

12. 'But, if authority for that purpose have not been 'received, the widow is entitled to a main'tenance only; by the text of NA'REDA: '"Let them allow a maintenance to his '"women for life.'"§

13. A passage of YA'JNYAWALCYA,

13. 'The same (it is pretended) will 'be subsequently declared by the contem-

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Annotations.

10. "*Must . . . . deliver the estate to the son.*"] It is thus shown, that a separated brother is meant; else, if there had been no partition, he could not have separate property. In the text subsequently cited, it appears from the direction for making the division equally, that the case of an unseparated co-heir is intended. Since there could be no partition, if he were already separated. *Subód'hini.*

11. *The widow's succession is in right of such an appointment.*] A widow, who has accepted authority for raising up issue to her husband, has the right of succession to his estate; but no other widow has so. *Víramitródaya.*

13. *The same (it is pretended) will be declared.*] Here the particle *cila* indicates disapprobation; as in the example, 'Ah! wilt thou [presume to]

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* MENU, 9. 146. † Ibid., 9. 120.

‡ VASISHT'HA, 17. 48. § NA'REDA, 13. 26. Vide supra § 7.

supposed to bear the same import.

plative saint: "And their childless wives, "conducting themselves aright, must be "supported; but such, as are unchaste, should be expel- "led; and so, indeed, should those who are perverse."*

14. Women are inapt to inherit wealth, since it is designed for religious uses.

14. 'Moreover, since the wealth of a regenerate man 'is designed for religious uses, the succes- 'sion of women to such property is unfit; 'because they are not competent to the per- 'formance of religious rites. Accordingly, it 'has been declared by some author, "Wealth '"was produced for the sake of solemn sacrifices: and they, '"who are incompetent to the celebration of those rites, do '"not participate in the property, but are all entitled to food '"and raiment." "Riches were ordained for sacrifices. There- '"fore they should be allotted to persons who are concerned '"with religious duties; and not be assigned to women, to '"fools, and to people neglectful of holy obligations."'

15. DHA'RE'S'WARA's argument (§ 8.—14) refuted.

15. That is wrong: for authority to raise up issue to the husband is neither specified in the text, ("The wife and the daughters also, &c."†) nor is it suggested by the premises. Besides, it may be here asked; is the appointment to raise up issue a reason for the widow's succession to the property? or is the issue, borne by her, the cause of her succession? If the appointment alone be the reason, it follows, that she has a right to the estate, without having borne a son; and the right of the son subsequently produced [by means of the appointment‡] does not ensue. But, if the offspring be

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fight.' For this passage of YA'JNYAWALCYA will be expounded in a different sense. So the expression 'by some author' (§ 14.) is intended as an indication of disrespect. Hence the insertion of the passage so cited, in this argument does not imply an acknowledgment of it as original and genuine. *Subód'hiní.*

14. *It has been declared by some author.*] The passage here cited is not considered as authentic; and no authority is shown for that and the following text. BA'LAM-BHAT'T'A.

15. *And the right of the son subsequently produced does not ensue.*] Which is inconsistent with the enunciation of his right of succession, as one of the twelve descriptions of sons, preferably to the widow and other heirs. *Subód'hiní* and BA'LAM-BHAT'T'A.

* YA'JNYAWALCYA, 2. 143. † § 2. ‡ BA'LAM-BHAT'T'A.

the sole cause [of her claim,*] the wife should not be recited as a successor: since, in that case, the son alone has a right to the goods.

16. His objections obviated.

16. But, it is said, women have a title to property, either through the husband, or through the son, and not otherwise. That is wrong: for it is inconsistent with the following text and other similar passages. "What was given before the nuptial fire, what "was presented in the bridal procession, what has been "given in token of affection, what has been received by "the woman from her brother, her mother, or her father, are "denominated the sixfold property of a woman."†

17. An inconsistency in his interpretation shown.

17 Besides, the widow and the daughters are announced as successors (§ 2), on failure of sons of all descriptions. Now by here affirming the right of a widow, who has been appointed to raise up issue, the right of her son to succeed to the estate is virtually affirmed. But that had been already declared: and therefore the wife ought not to be mentioned under the head [of succession to the estate‡] of one who leaves no male issue.

18. His explanation of GAUTAMA's text (§ 8.) proved to be erroneous.

18. But, it is alleged, the right of a widow, who is authorized to raise up issue to her husband, is deduced from the text of GAUTAMA: "Let kinsmen allied by the funeral obla-"tion, by family name, and by descent from "the same patriarch, share the heritage; or "the widow of a childless man: and she may either [remain "chaste, or may] seek offspring."§ This too is erroneous: for

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Annotations.

16. *That is wrong: for it is inconsistent with the following text.*] Admitting the restriction, that women obtain property through their husbands or sons only, still that restriction does not hold good universally, since women's right of property is declared in other instances. *Subód'hiní.*

17. *The wife ought not to be mentioned.*] She ought not to be here mentioned, lest it should be thought a vain repetition. *Subód'hiní.*

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* BA'LAM-BHAT'T'A. † MENU, 9. 194. ‡ BA'LAM-BHAT'T'A.

§ Vide § 8. The text is here translated according to the commentator's interpretation.

The right interpretation of it stated.

the sense, which is there expressed, is not 'if she seek to obtain offspring, she may 'take the goods of one who left no issue ;' but 'persons allied by the funeral oblation, by family name, 'and by descent from the same patriarch, share the effects 'of one who leaves no issue ; or his widow takes his estate : 'and she may either seek to obtain progeny, or may 'remain chaste.' This is an instruction to her, in regard to her duty. For the particle *(vá)* 'or,' denoting an alternative, does not convey the sense of 'if.' Besides it is fit,

A chaste widow's succession is expressly affirmed :

that a chaste woman should succeed to the estate, rather than one appointed to raise up issue, reprobated as this practice is in the law as well as in popular opinion. The succession of a chaste widow is expressly declared. "The widow of a "childless man, keeping unsullied her husband's bed, and "persevering in religious observances, shall present his fune-"ral oblation and obtain his entire share."* And an autho-

and an appointment to raise up issue is condemned.

rity to raise up issue is as expressly condemned by MENU : "By regenerate men "no widow must be authorized to conceive "by any other ; for they, who authorize her to conceive "by another, violate the primeval law."†

19. Proper interpretation of the text of VASISHT'HA (§ 11.)

19. But the text of VASISHT'HA, "An appointment "shall not be through covetousness ;"‡ must be thus interpreted : 'if the husband die 'either unseparated from his co-parceners or 're-united with them, she has not a right to

Annotations.

18. *She may either seek to obtain progeny.*] The author proposes two modes of conduct for a woman whose husband is deceased. One is, that she should seek offspring, or endeavour to obtain male issue under an authority for that purpose. The term *vá* (either, or,) in this place, does not signify 'if;' but indicates an alternative, and that implies an opposite case ; and the opposite case is the second mode of conduct, which, though not expressly stated in the text, must, by force of the particle *vá*, in its usual disjunctive acceptation, be opposite to the desire of obtaining progeny by means of an appointment to raise up issue : and this is consequently determined to be the duty of chastity. The meaning, therefore, is this : two modes of conduct are here prescribed ; either she must seek male issue by means of an appointment for that purpose, or she must remain chaste. *Subód'hiní.*

* Vide § 6. † MENU, 9. 64. Vide C. 1. Sect. 10. § 8. ‡ Vide § 11.

'the succession; and therefore an appointment to raise up 'issue must not be accepted for the sake of securing the 'succession to her offspring.'

20. And of the passage of NA'REDA (§ 12.)

20. As for the text of NA'REDA, "Let them allow a "maintenance to his women for life;"* since re-union of parceners had been premised (in a former text, viz., "The shares of re-united "brethren are considered to be exclusively theirs;"†) it must be meant to assign only a maintenance to their childless widows. Nor is tautology to be objected to that passage, the intermediate text being relative to re-united parceners ("Among brothers, if any one die without issue, &c."‡) For women's separate property is exempted from partition by this explanation of what had been before said; and a mere maintenance for the widow is at the same time ordained.

21. The text of YA'JNYAWALCYA (§ 13.) also will be explained in a different sense.

21. The passage, which has been cited, "Their childless wives, conducting them-"selves aright, must be supported;"§ will be subsequently shown to intend the wife of an impotent man and so forth.||

22. DHA'RE'S'WARA'S argument

22. As for the argument, that the wealth of a regenerate man is designed for religious uses; and that a woman's succession to such

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Annotations.

19. *Therefore an appointment . . . . must not be accepted.*] Considering that she has not herself a right to the estate, she ought not to seek an authority for raising up issue, from covetousness, with the view that the wealth may go to her progeny, as it cannot belong to herself. *Subód'hiní.*

20. *Nor is tautology to be objected.*] On the ground, that both passages convey the same import. For, in explaining what had been before said, the two several passages convey two distinct meanings, namely, that the women's separate property is not to be divided; and that a maintenance only is to be granted to them. What had been before said, is not all which is afterwards declared; that it should be charged with tautology. The text "Among "brothers, if any one die without issue," is an explanation of the preceding one ("The shares of re-united brethren are considered to be exclusively theirs.") The close of it, "except the wife's separate property," is a declaration of her property being indivisible; and the subsequent passage ("Let them allow a "maintenance to his women for life") contains a separate injunction. BA'LAMBHAT'T'A.

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* NA'REDA, 13. 26. Vide § 12. † Ibid., 12. 24.
‡ Ibid., 13. 25 See JÍMU'TA-VA'HANA. Ch. 11. Sect. 1. § 48.
§ Vide supra. § 13 || Vide Sect. 10. § 15.

of women's inaptness to inherit (§14), refuted.

property is unfit, because she is not competent to the performance of religious rites; that is wrong: for, if every thing, which is wealth, be intended for sacrificial purposes, then charitable donations, burnt offerings, and similar matters, must remain unaccomplished. Or, if it be alleged, that the applicableness of wealth to those uses is uncontradicted, since sacrifice here signifies religious duty in general; and charitable donations, burnt offerings and the rest are acts of religious duty: still other purposes of opulence and gratification, which are to be effected by means of wealth, must remain unaccomplished; and, if that be the case, there is an inconsistency in the following passages of YA'JNYAWALCYA, GAUTAMA, and MENU.

It is shown to be inconsistent with passages of YA'JNYAWALCYA, GAUTAMA, and MENU.

"Neglect not religious duty, wealth, or "pleasure, in their proper season."* "To "the utmost of his power, a man should not let morning, "noon, or evening, be fruitless, in respect of virtue, wealth, "and pleasure."† "The organs cannot "so effectually be restrained by avoiding "their gratification, as by constant knowledge [of the ills "incident to sensual pleasure."‡]

23. Besides, if wealth be designed for sacrificial uses, the argument would be reversed, by which it is shown, that the careful preservation

23. And is incompatible with

Annotations.

22. *Sacrifice here signifies religious duty in general.*] The relinquishment of a thing, with the view to its appertaining to a deity, is a sacrifice *(yága)* or consecration of the thing. The same design, terminated by casting the thing into the flames, is a burnt offering *(hóma)* or holocaust. The conferring of property on another by annulling a previous right, is a gift *(dána)* or donation. Such is the difference between sacrifice, burnt offering, and donation. *Subód'hiní.*

"*In their proper season.*"] This part of the text was wanting in the quotation of it, as here exhibited: but the passage, as it is read in its proper place, by the *Mitácshara*, APARA'RCA, and the *Dípacalicá*, contains the words *swacé cálé* 'in their proper season.'

23. *The argument would be reversed.*] The reasoning here alluded to occurs in the *Mímansá*; and is the 12th topic of the 4th section of the 3rd chapter. The passage of the *Véda*, which is there examined, and the initial words of which are quoted in the text, enjoins the careful preservation of

* YA'JNYAWALCYA, 1. 115. † Not found in GAUTAMA's institutes.
‡ MENU, 2. 96, partially quoted in this place

the reasoning of the Mimansa

of gold [inculcated by a passage of the *Véda**] "Let gold be preserved," is intended not for religious ends, but for human purposes.

24. Moreover, if the word sacrifice import religious duty in general, the succession of women to estates is most proper, since they are competent to the performance of auspicious and conservatory acts [as the making of a pool or a garden, &c.†]

24. Women might inherit, though wealth were designed for religious uses.

25. The text of NA'REDA, which declares the dependence of women, ("A woman has no right "to independence,"‡) is not incompatible with their acceptance of property; even admitting their thraldom.

25. Though held in thraldom, they are capable of property.

26. How then are the passages before cited ("Wealth "was produced for the sake of solemn "sacrifices, &c."§) to be understood? The answer is, wealth, which was obtained [in charity||] for the express purpose of defraying sacrifices, must be appropriated exclusively to that use even by sons and other successors. The text intends that: for the following passage declares it to be an offence [to act otherwise,] without any distinction in respect of sons and successors. "He, who, having received articles for a sacri-"fice, disposes not of them for that purpose, shall become a "kite or a crow."¶

26. Right interpretation of passages before cited (§ 14.)

27. It is said by CA'TYA'YANA, "Heirless property "goes to the king, deducting, however, a "subsistence for the females as well as "the funeral charges: but the goods

27. A passage of CA'TYA'YANA assigns a subsistence

Annotations.

gold, lest it lose its brightness and be tarnished. The question, raised on it, is, whether the observance of the precept be essential to the efficacy of sacrifice, or serve only a human purpose; and the result of the reasoning is, that the precept affects the person, and not the sacrifice. This reasoning is considered by the author to be incompatible with the notion, that wealth is intended solely for sacrificial uses.

* BA'LAM-BHAT'T'A. † Ibid. ‡ NA'REDA, 13. 31.
§ Vide § 14. || BA'LAM-BHAT'T'A.
¶ This is a passage of MENU according to BA'LAM-BHAT'T'A; and a text of the same import, but expressed in other words, occurs in his institutes, 11. 25.

to females, when an estate escheats to the king for want of heirs.

"belonging to a venerable priest, let "him bestow on venerable priests." "Heirless property," or wealth which is without an heir to succeed to it, "goes to the king," becomes the property of the sovereign; "deducting, how-

Interpretation of the text.

"ever, a subsistence for the females as well "as the funeral charges:" that is, excluding or setting apart a sufficiency for the food and raiment of the women, and as much as may be requisite for the funeral repasts and other obsequies in honour of the late owner, the residue goes to the king. Such is the construction of the text. An exception is added: "but the goods "belonging to a venerable priest," deducting, however, a subsistence for the females as well as the charges of obsequies, 'let him bestow on a venerable priest.'

28. It relates to concubines; and so does a similar text of NA'REDA.

28. This relates to women kept in concubinage: for the term employed is "females" *(yóshid.)* The text of NA'REDA likewise relates to concubines; since the word there used is "women" *(strí.)* "Except the wealth of a "*Bráhman'a* [property goes to the king on failure of heirs.] "But a king, who is attentive to the obligations of duty, "should give a maintenance to the women of such persons. "The law of inheritance has been thus declared."*

29. But here (§ 2) the wife's right of succession is declared.

29. But since the term "wife" *(patní)* is here employed, (§ 2.) the succession of a wedded wife, who is chaste, is not inconsistent with those passages.

30. If her husband was separat-

30. Therefore the right interpretation is this: when a man, who was separated from his co-heirs and not re-united with them, dies leaving no

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27. "*Let him bestow on venerable priests*" . . . . '*let him bestow on a venerable priest.*'] The commentator, BA'LAM-BHAT'T'A, considers as a variation in the reading of the text, the subsequent interpretation of it, 'let him bestow 'on a venerable priest:' *s'rótriyáyópapádayét* in place of *s'rótriyébhyas tad arpayét.* He remarks, however, that the singular number is used generically.

28. *The text . . . . relates to concubines.*] Or to twice-married women and others not considered as wives espoused in lawful wedlock. BA'LAM-BHAT'T'A.

* NA'REDA, 13. 51 — 52.

ed from his co-heirs and not re-united.

male issue, his widow [if chaste*] takes the estate in the first instance. For partition had been premised; and re-union will be subsequently considered.

31. S'RÍCARA'S opinion refuted. He supposes the widow's succession to be restricted to the case of a small property.

31. It must be understood, that the explanation, proposed by S'RÍCARA and others, restricting [the widow's succession] to the case of a small property, is refuted by this [following argument.†] If there be legitimate sons, it is provided, whether partition be made in the owner's life-time or after his decease, that the wife shall take a share equal to the son's. "If "he make the allotments equal, his wives must be rendered "partakers of like portions."‡ And again: "Of heirs dividing after the death of the "father, let the mother also take an equal "share."§ Such being the case, it is a mere error to say, that the wife takes nothing but a subsistence from the wealth of her husband, who died leaving no male issue.

But she takes a share, though there be sons.

32. She does not take merely enough for her subsistence.

32. But it is argued, that, under the terms of the texts above cited, ("his wives must be rendered partakers of like portions;" and "let "the mother also take an equal share;") a woman takes wealth sufficient only for her maintenance. That is wrong: for the words "share" or "portion," and "equal" or "like," might consequently be deemed unmeaning.

Annotations.

31. *It is a mere error to say, that the wife takes nothing but a subsistence.*] If the wife share a portion equal to that of a son, not an allotment sufficient only for her support both when the husband is living, and after his decease, though sons exist; more especially should it be affirmed, that she obtains the whole wealth of her husband, who leaves no male issue: and thus, since the widow's succession to the whole estate is established by reasoning *a fortiori*, the assertion, that she obtains no more than food and raiment, is erroneous. Besides, since the wife's participation with a son, who is entitled to take a share of the estate, or, if there be no other son, the whole of it, has been expressly ordained, it is fit that she should, on failure of male issue, take the wealth of her childless husband being separate from his co-heirs. *Subód'hiní.*

32. *For the words "share" and "equal" might consequently be deemed unmeaning.*] These terms are commonly employed to signify 'portion' and

* BA'LAM-BHAT'T'A † Ibid ‡ C. 1 Sect 2 § 8. § C. 1. Sect. 7 § 1.

33. Nor a subsistence if the estate be large, and a share if it be small.

33. Or suppose, that, if the wealth be great, she takes precisely enough for her subsistence; but, if small, she receives a share equal to that of a son. This again is wrong: for variableness in the precept must be the consequence. Thus, if the estate be considerable, the texts above cited, ("his wives must be rendered partakers of like portions;" and "let the mother also take an equal share;") assisted by another passage ["Let them allow a maintenance to his women for life;" § 12.*] suggest an allotment adapted for bare support. But, if the estate be inconsiderable, the same passages indicate the assignment of a share equal to a son's.

34. Argument illustrated by reasoning quoted from the *Mímansá*.

34. Thus, in the instance of the *Cháturmásya* sacrifices, in the disquisition [of the *Mímansá*] on the passage *dwayóh pran'ayanti*;† where it is maintained by the opponent, that the rules for the preparation of the sacrificial

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Annotations.

'parity.' By abandoning their own signification without sufficient cause, they would appear unmeaning. *Subód'hiní.*

33. *Variableness in the precept must be the consequence.*] If the passages above cited (§ 31.), assisted by another passage (§ 12.), ordain the widow's receipt of a sufficiency for her support, at the time of making a partition with the sons, whether her husband, who was wealthy, be then alive or dead; but ordain her taking of a share equal to that of a son, if her husband possess little property; then a single sentence, once uttered, is in one case dependent [on a different passage, for its interpretation,] and not so in another instance. Consequently, since it does not retain an uniform import, there is variableness in the precept. *Subód'hiní.*

34. *In the instance of the* Cháturmásya *sacrifices.*] These are four sacrifices performed on successive days, according to some authorities; but in the months of *A'shád'ha*, *Cártica* and *P'hálguna*, according to others. They are severally denominated *Vais'wédéva*, *V'arun'a-praghása*, *S'ácaméd'ha* and *S'unásíríya*. The oblations consist of roasted cakes *(puród'ása)*; and, at the second of them, two figures of sheep made of ground rice. The cakes are prepared in the usual manner, consisting of ground rice, kneaded with hot water, and formed into lumps of the shape of a tortoise: these are roasted on a specified number of potsherds *(capála)* placed in a circular hole, which contains one of the three consecrated fires perpetually maintained by devout *Bráhman'as*.

In the disquisition on the passage dwayóh pran'ayanti.] Part of a passage of the *Véda*, which is the subject of a disquisition in the *Mímansá*, and which gives name to it. This is the ninth (or, according to one mode of counting,

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* *Subód'hiní* and BA'LAM-BHAT'T'A.

† *Mímansá*, 7. 3. 9

fire at the *Sóma-yága* extend to these sacrifices; in consequence of which the injunction not to construct a northern altar (*uttara-védi*) at the *Vais'wédéva* and *S'unásíríya* sacrifices, must be understood as a prohibition of such altar; [which should else be constructed at those sacrifices, as at a *Sóma-yága*:] but it is answered by an advocate for the right opinion, that it is not a prohibition of that altar as suggested by extending to these sacrifices the rules for preparing the sacrificial fire at the *Sóma-yága*, but an exception to the express rule "prepare an *uttara-védi* at this sacrifice, [viz., at the *Cháturmásya*:"] it is urged in reply by the opponent, that variableness in the precept must follow, since the same precept thus authorizes the occasional construction of the altar, with reference to a prohibition of it, at the first and last of the [four] periods of sacrifice, and commands the construction of it at the two middle periods, independently of any other maxim: but it is finally shown as the right doctrine, for the very purpose of obviating the objection of variableness in the precept, that the prohibition of the altar at the first and last of the periods of sacrifice is a recital of a constant rule; and that the injunction, "prepare the *uttara-védi* at this sacrifice," commands its construction at the two middle periods (namely, the *Varun'a-praghása* and *S'ácaméd'ha*) with a due regard to that explanatory recital.

35. Another exposition of the

35. As for the doctrine, that, from the text of Menu ("Of him, who leaves no son, the father "shall take the inheritance, or the bro-

Annotations.

the seventh) topic in the third section of Jaimini's seventh chapter. See Jímu'ta-va'hana. Ch. 11. Sect. 5.

Since the same precept authorizes the occasional construction of the altar.] Since one precept commands it at a *Cháturmásya* sacrifice, and another forbids it at two of the periods of that sacrifice; the injunction, contrasted with the prohibition, seems to imply an option in this case: but, not being contrasted with any other rule, it becomes a cogent precept in the instance of the two other periods: and thus the rule, being cogent in one case and not in the other, is variable in its import and effect.

texts of MENU, S'ANC'HA, and NA'REDA proposed.

" thers,"*) as well as from that of S'ANC'HA (" The wealth of a man, who departs for " heaven, leaving no male issue, goes to " his brothers. If there be none, his father and mother " take it : or his eldest wife."†) The succession of brothers, to the estate of one who leaves no male issue, is deduced ; and that a wife obtains a sufficiency for her support, under the text, " Let them allow a maintenance to his women for life :"‡ this being determined, if a rich man die, leaving no male issue, the wife takes as much as is adequate to her subsistence, and the brethren take the rest ; but, if the estate be barely enough for the support of the widow, or less than enough, this text (" The wife and the daughters also ;"§) is propounded, on the controverted question whether the widow or the brothers inherit, to show, that the first claim prevails. This opinion the reverend teacher does not tolerate : for he interprets the text, " Of him who leaves no " son, the father shall take the inheritance, " or the brothers ;"‖ as not relating to the order of succession, since it declares an alternative ; but as intended merely to show the competency for inheriting, and as applicable when the preferable claimants, the widow and the rest, fail. The text of S'ANC'HA too relates to a re-united brother.

It is condemned by VIS'WARU'PA, who interprets otherwise the text of MENU (§ 7 ;)

and that of S'ANC'HA (§ 7.)

36. Besides, it does not appear either from this passage [of YA'JNYAWALCYA¶] or from the context, that it is relative to an inconsiderable estate. If the concluding sentence,

36. The passage of YA'JNYAWALCYA cannot be taken as

Annotations.

35. *On the controverted question whether the widow or the brothers inherit.*] Whether the widow inherits, as provided by NA'REDA ; or the brothers succeed conformably with the texts of MENU and S'ANC'HA. BA'LAM-BHAT'T'A.

This opinion the reverend teacher does not tolerate.] Meaning VIS'WARU'PA. *Subód'hiní* and BA'LAM-BHAT'T'A.

The text of S'ANC'HA *relates to a re-united brother.*] It relates to the case of a brother, who, after separation, becomes associated with his co-heirs, from affection or any other motive. *Subód'hiní.*

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* Vide § 7. † Ibid. ‡ NA'REDA. Vide § 7.
§ YA'JNYAWALCYA. Vide § 2. ‖ MENU. Vide § 7. ¶ *Subód'hiní.*

relating to a small estate in one instance; since it must relate to wealth generally in another case.

"On the failure of the first among these, "the next in order is heir;* be restricted to the case of a small property, by reference to another passage, in two instances (of the widow and of the daughters,) but relate to wealth generally in the other instances (of the father and the rest,) the consequent defect of *variableness in the precept* (§ 33.) affects this interpretation.

37. It appears from a passage of HA'RI'TA, that a widow, suspected of incontinency, has a maintenance only; but otherwise inherits the whole property.

37. "If a woman, becoming a widow in her youth, "be headstrong, a maintenance must in "that case be given to her for the support "of life."† This passage of HA'RI'TA is intended for a denial of the right of a widow suspected of incontinency, to take the whole estate. From this very passage [of HA'RI'TA‡], it appears that a widow, not suspected of misconduct, has a right to take the whole property.

38. This serves to explain a passage of S'ANC'HA (§ 7.)

38. With the same view, S'ANC'HA has said, "Or his eldest wife." (§ 7.) Being eldest by good qualities, and not supposed likely to be guilty of incontinency, she takes the whole wealth; and, like a mother, maintains any other headstrong wife [of her husband.] Thus all is unexceptionable.

39. Conclusion.

39. Therefore it is a settled rule, that a wedded wife, being chaste, takes the whole estate of a man, who, being separated from his co-heirs and not subsequently re-united with them, dies leaving no male issue.

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* Vide § 2.

† In the *Vivâda-chintáman'i* this passage is read without the conditional particle: viz., "A woman . . . . is headstrong: but a maintenance must ever be given to her . . . ."

‡ BA'LAM-BHAT'T'A.

SECTION II.

Right of the Daughters and Daughter's Sons.

1. After a wife, a daughter inherits: whatever be her tribe.

1. On failure of her, the daughters inherit. They are named in the plural number (Section 1. § 2.) to suggest the equal or unequal participation of daughters alike or dissimilar by class.

2. Passages of CA'TYA'YANA and VRĬHASPATI declare her right of succession.

2. Thus CA'TYA'YANA says, "Let the widow succeed "to her husband's wealth, provided she be "chaste; and, in default of her, let the "daughter inherit, if unmarried."* Also VRĬHASPATI: "The wife is pronounced "successor to the wealth of her husband; "and, in her default, the daughter. As a son, so does the "daughter of a man proceed from his several limbs. How "then should any other person take her father's wealth?"

3. First the unmarried daughter inherits.

3. If there be competition between a married and an unmarried daughter, the unmarried one takes the succession under the specific provisions of the text above cited ("in default "of her, let the daughter inherit, if unmarried.")

Annotations.

1. *They are named in the plural number.*] Here female issue is signified by the original word "daughter" *(duhitrī:)* and that is applicable, indifferently, to such as belong to the same or to different tribes. Plurality is denoted by the termination of the plural number, (as in *duhitaras;*) which includes, without inconsistency, those who are dissimilar from the parent. Therefore daughters, alike or different by class, are indicated by the original word and its termination. They share equal or unequal portions in the order before mentioned, namely, four shares, three, two, or one (C. 1. Sect. 8. § 1.) *Subód'hiní.*

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* Vide supra. Sect 1 § 6.

4. Next, a married but unprovided one.

And, lastly, an enriched one.

4. If the competition be between an unprovided and an enriched daughter, the unprovided one inherits ; but, on failure of such, the enriched one succeeds ; for the text of GAUTAMA is equally applicable to the paternal, as to the maternal estate. "A "woman's separate property goes to her daughters, "unmarried or unprovided."*

5. An appointed daughter is not meant.

5. It must not be supposed, that this relates to the appointed daughter : for, in treating of male issue, she and her son have been pronounced equal to the legitimate son ("Equal "to him is the son of an appointed daughter,"† or the daughter appointed to be a son.‡)

6. The daughter's son inherits on failure of daughters ; as declared by VISHN'U,

and by MENU.

6. By the import of the particle "also" (Sect. 1. § 2.) the daughter's son succeeds to the estate on failure of daughters. Thus VISHN'U says, "If a man leave neither son, nor son's son, "nor [wife, nor female§] issue, the daugh- "ter's son shall take his wealth. For, in "regard to the obsequies of ancestors, daughter's sons are "considered as son's sons."|| MENU likewise declares, "By that male child, whom a "daughter, whether formally appointed or not, shall pro-

Annotations.

4. *The text of* GAUTAMA *is equally applicable to the paternal . . . . estate.*] The meaning is this: since the daughter's right is declared with reference to a woman's peculiar property, but it is not intended by using the word "woman's" to restrict it positively to that single object, the parity of reasoning holds good. *Subód'hiní.*

5. *For, in treating of male issue, she and her son have been pronounced, &c.*] Since she has been noticed while treating of male issue, the introduction of her in this place would be improper. *Subód'hiní.*

6. *The daughter's son succeeds to the estate on failure of daughters.*] According to the commentary of BA'LAM-BHAT'T'A, the daughter's daughter inherits in default of daughter's sons. He grounds this opinion, for which however there is no authority in VIJNYA'NE'S'WARA's text, upon the analogy, which this author has admitted in another case, between the succession to a woman's separate property and the inheritance of the paternal estate. (Vide § 4.)

* GAUTAMA, 28. 22. Vide supra C. 1. Sect. 2. § 11. † C. 1. Sect. 11. § 1
‡ C. 1. Sect. 11. § 3 § BA'LAM-BHAT'T'A.
|| Not found in VISHN'U's institutes; but cited under his name in the *Smriti-chandrica*.

duce from a husband of an equal class, the maternal grandfather becomes the grandsire of a son's son: let that son give the funeral oblation and possess the inheritance."*

SECTION III.

Right of the Parents.

1. Next, both parents inherit.

1. On failure of those heirs, the two parents, meaning the mother and the father, are successors to the property.

2. First, the mother; and after her, the father.

2. Although the order, in which parents succeed to the estate, do not clearly appear [from the tenor of the text; Sect. 1. § 2.] since a conjunctive compound is declared to present the meaning of its several terms at once;† and the omission of one term and retention of the other constitute an ex-

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Annotations.

2. *Although the order . . . . do not clearly appear.*] It is declared, that the two parents are successors to the property, if there be no daughter nor daughter's son. Since the term *(pitarau)* 'parents' is formed by omitting one and retaining the other member of a complex expression (mother and father;) shall they conjointly take the estate, or severally? and is the order of succession optional, or fixed and regulated? The author replies to these questions. *Subód'hinì.*

A conjunctive compound is declared, &c.] A compound term is formed, as directed by PA'N'INI and his commentators,‡ when two or more nouns occur with the import of the conjunction 'and,' in two of its senses (viz., reciprocation and cumulation.§) This is limited by the emendatory rule of CA'TYA'YANA to the case where the sense conveyed by each word is presented at once: while the same terms, connected in a phrase by the conjunction copulative, would present the sense of each successively.

The omission of one term and retention of the other constitute an exception.] When the word *pitrì* 'father' occurs with *mátrì* 'mother,' it may be retained and the other term be rejected. This is an exception to the general rule of

* MENU, 9. 136.

† *Vártica*, 1. on PA'N'INI, 2. 2. 20.

‡ Vide infra. Sect. 11. § 20.

§ See Dictionary of AMERA. Book 3, Chap. 4, Sect. 28, Verse 2.

ception* to that [complex expression ;] yet, as the word 'mother' stands first in the phrase into which that is resolvable, and is first in the regular compound (*mátápitarau*) 'mother and father†' when not reduced [to the simpler form *pitarau* 'parents'] by the omission of one term and retention of the other; it follows from the order of the terms and that of the sense which is thence deduced, and according to the series thus presented in answer to an inquiry concerning the order of succession, that the mother takes the estate in the first instance; and, on failure of her, the father.

3. The mother is nearest to her son; and should

3. Besides, the father is a common parent to other sons, but the mother is not so: and, since her propinquity is consequently greatest, it is fit, that she should take the estate

Annotations.

composition. It is optional: and the regular form may be retained in its stead. Ex. *Pitarau* 'two parents;' or *Mátápitarau* 'mother and father.' PA'N'INI, 1. 2. 70. and 2. 2. 29.—34.

The word mother stands first in the phrase into which that is resolvable.] The compound term, whether reduced to the simpler expression or retaining its complex form, is resolvable into the phrase *mátá chapitá cha* 'both the mother and the father.' This, however, is only the customary order of terms, not specially enjoined by any rule of syntax.

Is first in the regular compound.] Conformably with one of CA'TYA'YANA'S emendatory rules on PA'N'INI'S canon for the collocation of terms in composition. (2. 2. 34.) That rule requires the most revered object to have precedence: and the example of the rule, as given in PA'TANJALI'S *Máhábháshya* and VA'MANA'S *Cásica-vritti*, is this very compound term *mátápitarau* 'mother and father.' The commentators, CAIYAT'A and HARADATTA, assign reasons why a mother is considered to be more venerable than a father.

It follows, from the order of the terms.] The compound term *mátápitarau* 'mother and father,' as well as the abridged and simpler expression *pitarau* 'parents,' is resolvable into the same phrase *mátá cha pitá cha* 'both the mother and the father.' Thus, in every form of expression, 'mother' stands first. Hence the author infers, that the mother's priority in regard to succession to wealth is intended by the text. (Sect. 1. § 2.)

3. *The father is a common parent to other sons.*] The mother is, in respect of sons, not a common parent to several sets of them: and her propinquity is therefore more immediate, compared with the father's. But his pater-

* PA'N'INI, 1. 2. 70.

† *Vártica*, 3. on PA'N'INI, 2. 2. 34.

therefore inherit; conformably with a passage of MENU.

in the first instance, conformably with the text "To the nearest *sapin'd'a*, the inherit- "ance next belongs."*

4. That text, though it speak of *Sapin'd'as*, is not restricted to them.

4. Nor is the claim in virtue of propinquity restricted to *(sapin'd'as)* kinsmen allied by funeral oblations: but, on the contrary, it appears from this very text, (§ 3.) that the rule of propinquity is effectual, without any exception, in the case of *(samánódacas)* kindred connected by libations of water, as well as other relatives, when they appear to have a claim to the succession.

5. Conclusion.

5. Therefore, since the mother is the nearest of the two parents, it is most fit, that she should take the estate. But, on failure of her, the father is successor to the property.

Annotations.

nity is common; since he may have sons by women of equal rank with himself, as well as children by wives of the *Cshátriya* and other inferior tribes; and his nearness is therefore mediate, in comparison of the mother's. The mother consequently is nearest to her child; and she succeeds to the estate in the first instance, since it is ordained by a passage of MENU, that the person, who is nearest of kin, shall have the property. *Subód'hiní.*

5. *On failure of her, the father is successor to the property.*] The commentator, BA'LAM-BHAT'T'A, is of opinion, that the father should inherit first and afterwards the mother; upon the analogy of more distant kindred, where the paternal line has invariably the preference before the maternal kindred; and upon the authority of several express passages of law. NANDA-PANDITA, author of commentaries on the *Mitácshara* and on the institutes of VISHN'U, had before maintained the same opinion. But the elder commentator of the *Mitácshara*, VIS'WE'S'WARA-BHAT'T'A has in this instance followed the text of his author in his own treatise entitled *Madana-Párijata*, and has supported VIJNYA'NE'S'WARA's argument both there and in his commentary named *Subód'hiní*. Much diversity of opinion does indeed prevail on this question. S'RÍCARA maintains, that the father and mother inherit together: and the great majority of writers of eminence (as APARA'RCA and CAMALA'CARA, and the authors of the *Smrĭti-chandrica*, *Madana-ratna*, *Vyavahára-mayúc'ha*, &c.) gives the father the preference before the mother. JÍMU'TA-VA'HANA and RAGHUNANDANA have adopted this doctrine. But VA'CHESPATI MIS'RA, on the contrary, concurs with the *Mitácshara* in placing the mother before the father; being guided by an erroneous reading of the text of VISHN'U (Sect. 1. § 6.), as is remarked in the *Víramitródaya*. The author of the latter work proposes to reconcile these con-

* MENU, 9, 187.

SECTION IV.

Right of the Brothers.

1. On failure of the father, brethren share the estate. Accordingly Menu says, "Of him, who "leaves no son, the father shall take the in- "heritance or the brothers."*

1. Next to the parents, the brothers inherit.

2. It has been argued by D'HA'RE'S'WARA, that, 'under 'the following text of Menu, "Of a son "dying childless, the mother shall take "the estate; and, the mother also being "dead, the father's mother shall take the "heritage;"† even while the father is living, 'if the mother be dead, the father's mother, 'or, in other words, the paternal grandmother, and not 'the father himself, shall take the succession: because 'wealth, devolving upon him, may go to sons dissimilar

2. D'HA'RE'S'WARA affirms the prior right of the paternal grandmother; on the ground of a passage of Menu.

Annotations.

tradictions by a personal distinction. If the mother be individually more venerable than the father, she inherits; if she be less so, the father takes the inheritance.

1. *Brethren.*] The commentators, NANDA-PANDITA and BA'LAM-BHAT'T'A, consider this as intending 'brothers and sisters,' in the same manner in which "parents" have been explained 'mother and father,' (Sect. 3. § 2.) and conformably with an express rule of grammar (PA'N'INI, 1. 2. 68.) They observe, that the brother inherits first: and, in his default, the sister. This opinion is controverted by CAMALA'CARA and by the author of the *Vyavahára-mayúc'ha.*

2. *It has been argued by* D'HA'RE'S'WARA.] It had been shown (Sect. 3.) that the father inherits on failure of the mother. But that is stated otherwise by different authors. To refute the opinion maintained by one of them, the author reverts to the subject by a retrospect analogous to the backward look of the lion. *Subód'hiní* and BA'LAM-BHAT'T'A.

Because wealth, devolving on him, may go to sons dissimilar.] The meaning is this: if the succession be taken by the father, the property becomes a paternal estate, and may devolve on his sons whether belonging to the *Múrdd'hávasicta* [or another mixt‡] tribe or to his own class. But, if it be

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* MENU, 9. 185. Vide Sect. 1. § 7. † MENU, 9. 217. Vide Sect. 1. § 7

‡ BA'LAM-BHAT'T'A.

'by class; but what is inherited by the paternal grand-'mother, goes to such only as appertain to the same tribe: 'and therefore the paternal grandmother takes the estate.'

3. But that is contradicted by VIS'WARU'PA; citing another passage of the same author.

3. The holy teacher [VIS'WARU'PA*] does not assent to that doctrine: because the heritable right of sons even dissimilar by class has been expressly ordained by a passage above cited: "The sons of a *Bráhman'a,* in the several "tribes, have four shares, or three, or two, or one."†

4. A text of MENU, excluding the king, intends the sovereign, not the *Cshátriya.*

4. But the passage of MENU, expressing that "The "property of a *Bráhman'a* shall never be "taken by the king,"‡ intends the sovereign, not a son [of the late owner by a woman of the royal or military tribe].

5. The whole blood inherits first; as nearest of kin.

5. Among brothers, such as are of the whole blood, take the inheritance in the first instance, under the text before cited: "To the "nearest *sapin'd'a,* the inheritance next "belongs."§ Since those of the half blood are remote through the difference of the mothers.

6. Next the half blood.

6. If there be no uterine (or whole) brothers, those by different mothers inherit the estate.

Annotations.

taken by the grandmother, it becomes a maternal estate and devolves on persons of the same tribe, namely, her daughters; or successively, on failure of them, her daughter's sons, her own sons, and so forth. *Subód'hiní* and BA'LAM-BHAT'T'A.

4. *Intends the sovereign, not a son.*] It does not prohibit the succession of a *Bráhman'a's* son by a *Cshátriya* wife, denominated king as being of his mother's tribe, which is the royal or military one. But it relates to an escheat to the sovereign. Therefore it is not an exception to the passage cited in the preceding paragraph: and VIS'WARU'PA's reasoning holds good, that 'D'HA'RE'S'WARA's objection would be valid, if there were any harm in the ulti-'mate succession of sons dissimilar by class. But that is not the case. On the 'contrary, they are expressly pronounced by the text here cited, to be par-'takers of inheritance.' *Subód'hiní.*

6. *If there be no uterine (or whole) brothers, those by different mothers inherit.*] The author of the *Vyavahára-mayúc'ha* censures the preference here

* The name is supplied by the *Subód'hiní.*

† YA'JNYAWALCYA, 2. 126. Vide supra. C. 1. Sect. 8. § 1

‡ MENU, 9. 189 Vide infra. Sect. 7 § 5

§ Ibid., 9. 187 Vide Sect. 3. § 3

7. After brothers, nephews inherit in like manner.

7. On failure of brothers also, their sons share the heritage in the order of the respective fathers.

8. They do not share with their uncles.

8. In case of competition between brothers and nephews, the nephews have no title to the succession: for their right of inheritance is declared to be on failure of brothers [" both " parents, brothers likewise, and their sons." Sect. 1. § 2.*]

9. But they take a share which had vested in their father.

9. However, when a brother has died leaving no male issue [nor other nearer heir,†] and the estate has consequently devolved on his brothers indifferently, if any one of them die before a partition of their brother's estate takes place, his sons do in that case acquire a title through their father: and it is fit, therefore, that a share should be allotted to them, in their father's right, at a subsequent distribution of the property between them and the surviving brothers.

Annotations.

given to the brothers of the half blood before the nephews, being sons of brothers of the whole blood.

7. *Their sons share the heritage.*] Including, say NANDA-PANDITA and BA'LAM-BHAT'T'A, the daughters as well as the sons of brothers, and the sons and daughters of sisters. This consequently will comprehend all nephews and nieces.

In the order of the respective fathers.] In their order as brothers of the whole blood, and of the half blood. BA'LAM-BHAT'T'A.

By analogy to the case of grandsons by different fathers (Chap. 1. Sect. 8.), the distribution of shares shall be made, through allotments to their respective fathers, and not in their own right, whether there be one, two, or many sons of each brother. *Subód'hini.*

That is wrong: for the brethren had not a vested interest in their brother's wealth before their decease; and property was only vested in the nephews by the owner's demise. BA'LAM-BHAT'T'A.

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* and BA'LAM-BHAT'T'A.

† BA'LAM-BHAT'T'A.

SECTION V.

Succession of kindred of the same family name: termed Gótraja, *or Gentiles.*

1. Next to the nephew, the kindred are heirs.

1. IF there be not even brother's sons, gentiles share the estate. Gentiles are the paternal grandmother and relations connected by funeral oblations of food and libations of water.

2. First, the paternal grandmother.

2. In the first place, the paternal grandmother takes the inheritance. The paternal grandmother's succession immediately after the mother, was seemingly suggested by the text before cited, "And, the mother also being dead, the "father's mother shall take the heritage:"* no place, however, is found for her in the compact series of heirs from the father to the nephew: and that text ("the father's mother "shall take the heritage") is intended only to indicate her general competency for inheritance. She must, therefore. of course succeed immediately after the nephew; and thus there is no contradiction.

3. Next the paternal grandfather.

3. On failure of the paternal grandmother, the *(gótraja)* kinsmen sprung from the same family with the deceased and *(sapin'd'a)*

Annotations.

1. *Gentiles.*] *Gótraja* or persons belonging to the same general family *(gótra)* distinguished by a common name: these answer nearly to the *Gentiles* of the *Roman* law.

2. *She must, therefore, of course succeed.*] Some copies of the *Mitácshara* read this passage differently. The variation is noticed in the commentary of BA'LAM-BHAT'T'A, viz., 'She succeeds, after the preceding claimants, if they be dead,' *uparitana-mritanantaram* instead of *utcarshé tat sutanantaram.* The commentary remarks, that the 'preceding *(uparitana)* claimants' are the father and the rest down to the brother's son.

3. *On failure of the paternal grandmother . . . . the paternal grandfather.*

* Sect 1 § 7.

connected by funeral oblations, namely, the paternal grandfather and the rest, inherit the estate. For kinsmen sprung from a different family, but connected by funeral oblations, are indicated by the term cognate (*band'hu* Sect. 6.)

4. After him, the uncles and their sons.

4. Here, on failure of the father's descendants, the heirs are successively the paternal grandmother, the paternal grandfather, the uncles and their sons.

5. Then the great grandmother, great grandfather, grand uncles and so forth, to the seventh degree.

5. On failure of the paternal grandfather's line, the paternal great grandmother, the great grandfather, his sons and their issue, inherit. In this manner must be understood the succession of kindred belonging to the same general family and connected by funeral oblations.

Annotations.

BA'LAM-BHAT'T'A insists, that the grandfather inherits before the grandmother, as the father before the mother. See Section 3.

5. *In this manner must be understood the succession of kindred.*] The *Subód'hiní*, commenting on the first words of the following section, carries the enumeration a little further, viz., 'the paternal great grandfather's mother, 'great grandfather's father, great grandfather's brothers and their sons. The 'paternal great grandfather's grandmother, great grandfather's grandfather, 'great grandfather's uncles and their sons. The same analogy holds in the 'succession of kindred connected by a common libation of water.'

The scholiast of VISHN'U, who is also one of the commentators of the *Mitácshara*, states otherwise the succession of the near and distant kindred, in expounding the passage of VISHN'U "if no brother's son exist, it passes to "kinsmen (*band'hu*;) in their default, it devolves on relations (*saculya*):"* where BA'LAM-BHAT'T'A, on the authority of a reading found in the *Mad'ana-ratna*, proposes to transpose the terms *band'hu* and *saculya*; for the purpose of reconciling VISHN'U with YA'JNYAWALCYA, by interpreting *saculya* in the sense of *gótraja* or kinsmen sprung from the same family. NANDA-PANDITA, preserving the common reading, says, 'kinsmen (*band'hu*) are *sapin'd'as*; and these may 'belong to the same general family or not. First, those of the same general 'family (*sagotra*) are heirs. They are three, the father, paternal grandfather, 'and great grandfather; as also three descendants of each. The order is this: 'in the father's line, on failure of the brother's son, the brother's son's son 'is heir. In default of him, the paternal grandfather, his son and grand-'son. Failing these, the paternal great grandfather, his son and grandson. In

* VISHN'U, 17. 10.—11

6. Afterwards more distant kindred: either to the 14th degree; or as far as consanguinity is ascertainable: so MENU describes them.

6. If there be none such, the succession devolves on kindred connected by libations of water: and they must be understood to reach to seven degrees beyond the kindred connected by funeral oblations of food: or else, as far as the limits of knowledge as to birth and name extend. Accordingly *Vrihat-*MENU says, "The relation of the *sapin'd'as,* "or kindred connected by the funeral oblation, ceases with "the seventh person: and that of *samánódacas,* or those "connected by a common libation of water, extends to the

Annotations.

'this manner the succession passes to the fourth degree inclusive; and not to 'the fifth: for the text expresses "The fifth has no concern with the funeral '"oblations."* The daughters of the father and other ancestors must be 'admitted, like the daughter of the man himself, and for the same reason. On 'failure of the father's kindred connected by funeral oblations, the mother's 'kindred are heirs, namely, the maternal grandfather, the maternal uncle and 'his son; and so forth. In default of these, the successors are the mother's 'sister, her son and the rest.

The commentator takes occasion to censure an interpretation, which corresponds with that of the *Mitácshara* as delivered in the following section (S. 6. § 1.); and according to which the cognate kindred of the man himself, of his father and of his mother are the sons of his father's sister and so forth: because it would follow, that the father's sister's son and the rest would inherit, although the man's own sister and sister's sons were living. BA'LAM-BHAT'T'A, however, repels this objection by the remark, that the sister and sister's sons have been already noticed as next in succession to the brother and brother's sons: which is indeed NANDA-PANDITA's own doctrine.

He adds, 'after the heirs abovementioned, the *saculya* or distant kinsman 'is entitled to the succession: meaning a relation in the fifth or other remoter 'degree.'

This whole order of succession, it may be observed, differs materially from that which is taught in the text of the *Mitácshara.* On the other hand, the author of the *Víramitrodaya* has exactly followed the *Mitácshara;* and so has CAMALA'CARA: and it is also confirmed by MA'D'HAVA A'CHA'RYA, in the *Vyavahára-mád'hava,* as well as by the *Smríti-chandrica.*

But the author of the *Vyavahára-mayúc'ha* contends for a different series of heirs after the brother's son: '1st, the paternal grandmother; 2nd, the sister; '3rd, the paternal grandfather and the brother of the half blood, as equally near 'of kin; 4th, the paternal great grandfather, the paternal uncle and the son of a 'brother of the half blood, sharing together as in the same degree of affinity.' He has not pursued the enumeration further; and the principle stated by him, nearness of kin, does not clearly indicate the rule of continuation of this series.

* MENU, 9. 186

"fourteenth degree; or as some affirm, it reaches as far as "the memory of birth and name extends. This is signified "by *gótra* or the relation of family name."*

SECTION VI.

On the succession of cognate kindred, band'hu.

1. After gentiles, cognates are heirs.

They are of three sorts, as distinguished in a passage of law.

1. On failure of gentiles, the cognates are heirs. Cognates are of three kinds; related to the person himself, to his father, or to his mother: as is declared by the following text. "The sons of his own father's sister, "the sons of his own mother's sister, and the "sons of his own maternal uncle, must be "considered as his own cognate kindred. The sons of "his father's paternal aunt, the sons of his father's maternal "aunt, and the sons of his father's maternal uncle, must be "deemed his father's cognate kindred. The sons of his "mother's paternal aunt, the sons of his mother's maternal "aunt, and the sons of his mother's maternal uncles, must "be reckoned his mother's cognate kindred."†

2. First the kindred of the late

2. Here, by reason of near affinity, the cognate kindred of the deceased him-

Annotations.

1. *The cognates are heirs.*] *Band'hu*, cognate or distant kin, corresponding nearly to the *Cognati* of the *Roman* law.

Cognates are of three kinds.] BA'LAM-BHAT'T'A notices a variation in the reading, *bánd'haváh* for *bánd'havah*. It produces no essential difference in the interpretation.

Related to the person himself, to his father or to his mother.] APARA'RCA, as remarked by CAMALA'CARA, disallows the two last classes of cognate kindred, as having no concern with inheritance; and restricts the term *band'hu*, in the text, to the kindred of the owner himself. The author of the *Vyavahára-mayúc'ha* confutes that restriction.

* The first part of this passage occurs in MENU's institutes. 5. 60. The remainder of the text differs.

† The text is seemingly ascribed by the commentator BA'LAM-BHAT'T'A to *Vrĭdd'ha* SA'TA'TAPA. But it is quoted in the *Vyavahara-Mád'hava* as a text of BAUD'HA'YANA.

owner; then those of his father; and lastly, those of his mother.

self, are his successors in the first instance: on failure of them, his father's cognate kindred: or, if there be none, his mother's cognate kindred. This must be understood to be the order of succession here intended.

SECTION VII.

On the succession of strangers upon failure of the kindred.

1. After kindred, the preceptor is heir; by the text of A'PASTAMBA: and, next to him, the pupil.

1. IF there be no relations of the deceased, the preceptor, or, on failure of him, the pupil, inherits, by the text of A'PASTAMBA. "If "there be no male issue, the nearest kins- "man inherits: or, in default of kindred, the "preceptor; or, failing him, the disciple."

2. And failing these, the fellow-student.

2. If there be no pupil, the fellow-student is the successor. He, who received his investiture, or instruction in reading or in the knowledge of the sense of scripture, from the same preceptor, is a fellow-student.

3. If there be none, a learned priest is heir; according to GAUTAMA.

3. If there be no fellow-students, some learned and venerable priest should take the property of a *Bráhman'a,* under the text of GAUTAMA: "Venerable priests should share "the wealth of a *Bráhman'a,* who leaves no "issue."*

4. Or any *Bráhman'a,* as MENU has provided.

4. For want of such successors, any *Bráhman'a* may be the heir. So MENU declares: "On "failure of all those, the lawful heirs are "such *Bráhman'as,* as have read the three "*Védas,* as are pure in body and mind, as have subdued "their passions. Thus virtue is not lost."†

Annotations.

2. *This must be understood to be the order of succession.*] See a note at the close of the last section.

* GAUTAMA, 28. 39. † MENU. 9. 188.

5. But not the king: so MENU and NA'REDA declare.

5. Never shall a king take the wealth of a priest; for the text of MENU forbids it: "The property of a *Bráhman'a* shall never be taken by the king: this is a fixed law."* It is also declared by NA'REDA: "If there be no heir of a *Bráhman'as* wealth, on his demise, it must be given to a *Bráhman'a*. Otherwise the king is tainted with sin."†

6. In other cases the sovereign takes the escheat: as is ordained by MENU.

6. But the king, and not a priest, may take the estate of a *Cshátriya* or other person of an inferior tribe, on failure of heirs down to the fellow-student. So MENU ordains: "But the "wealth of the other classes, on failure of "all [heirs,] the king may take."‡

SECTION VIII.

On succession to the property of a hermit or of an ascetic.

1. The heirs of persons devoted to religion are specified by YA'JNYAWALCYA.

1. IT has been declared, that sons and grandsons [or great grandsons §] take the heritage: or, on failure of them, the widow or other successors. The author now propounds an exception to both those laws: "The "heirs of a hermit, of an ascetic, and of a "professed student, are, in their order, the preceptor, the "virtuous pupil, and the spiritual brother and associate in "holiness."||

2. Exposition of the text.

2. The heirs to the property of a hermit, of an ascetic, and of a student in

Annotations.

1. "*A virtuous pupil.*"] The condition, that he be virtuous, is intended generally. Hence the preceptor and the fellow-hermit are successors in their respective cases, provided their conduct be unexceptionable. With a view to this, YA'JNYAWALCYA has placed the words "virtuous pupil" in the middle of the text, to indicate the connexion of the epithet with the preceding and following terms. *Subód'hini, &c.*

* MENU, 9. 189.
† Not found in the institutes of NA'REDA.
‡ MENU, 9. 189.
§ BA'LAM-BHAT'T'A.
|| YA'JNYAWALCYA, 2. 138.

theology, are, in order, (that is, in the inverse order,) the preceptor, a virtuous pupil, and a spiritual brother belonging to the same hermitage.

3. The natural relations do not succeed. But the preceptor is heir of a professed student.

3. The student *(brahmechárí)* must be a professed or perpetual one: for the mother and the rest of the natural heirs take the property of a temporary student; and the preceptor is declared to be heir to a professed student as an exception [to the claim of the mother and the rest.*]

4. And the pupil is the successor of an ascetic.

4. A virtuous pupil takes the property of a *yati* or ascetic. The virtuous pupil, again, is one who is assiduous in the study of theology, in retaining the holy science, and in practising its ordinances. For a person, whose conduct is bad, is unworthy of the inheritance, were he even the preceptor or [standing in] any other [venerable relation.]

5. But the companion of a hermit is his heir.

5. A spiritual brother and associate in holiness takes the goods of a hermit *(vánaprast'ha.)* A spiritual brother is one who is engaged as a brotherly companion [having consented to become so.†] An associate in holiness is one appertaining to the same hermitage. Being a spiritual companion, and belonging to the same hermitage, he is a spiritual brother associate in holiness.

6. In default of those heirs respectively, an associate in holiness is the successor.

6. But, on failure of these, (namely, the preceptor and the rest,) any one associated in holiness takes the goods; even though sons and other natural heirs exist.

7. Objection. They can have no property by inheritance, being pronounced disqualified by VASISHT'HA:

7. Are not those, who have entered into a religious profession, unconcerned with hereditable property? since VASISHT'HA declares, "They, "who have entered into another order, "are debarred from shares."‡ How then can there be a partition of their pro-

Annotations.

1. *A yati or ascetic.*] The term 'ascetic' is in this translation used for the *yati* or *sannyásí*; and 'hermit' or 'anchoret' for the *vánaprast'ha*. In former translations, as in the version of MENU by Sir WILLIAM JONES, the two last terms were applied severally to the two orders of devotion.

* *Subód'hiní.* † Ibid. ‡ VASISHT'HA, 17. 13. Vide infra. Sect. 10 § 3.

nor any property acquired by themselves; being incapable of acquisitions, as shown by GAUTAMA, &c.

perty? Nor has a professed student a right to his own acquired wealth: for the acceptance of presents, and other means of acquisition, [as officiating at sacrifices and so forth,*] are forbidden to him. And, since GAUTAMA ordains, that "a mendicant shall have no hoard;"† the mendicant also can have no effects by himself acquired.

8. Answer. A hermit may have a hoard of necessaries for a day or a year: as intimated by YA'JNYAWALCYA.

And an ascetic and a professed student have clothes and other necessaries.

8. The answer is, a hermit may have property: for the text [of YA'JNYAWALCYA] expresses "The hermit may make a hoard of things "sufficient for a day, a month, six months, "or a year; and, in the month of *A's'wina*, "he should abandon [the residue of] "what has been collected."‡ The ascetic too has clothes, books, and other requisite articles: for a passage [of the *Véda*§] directs, that "he should wear clothes to cover his privy parts;" and a text [of law||] prescribes, that "he should take the requisites for his austerities and his "sandals." The professed student likewise has clothes to cover his body; and he possesses also other effects.

9. Succession to such property is regulated.

9. It was therefore proper to explain the partition or inheritance of such property.

SECTION IX.

On the re-union of kinsmen after partition.

1. YA'JNYAWALCYA declares the preferable right of the re-united parcener, before the widow, &c.

1. THE author next propounds an exception to the maxim, that the wife and certain other heirs succeed to the estate of one who dies leaving no male issue. "A re-united "[brother] shall keep the share of his re-"united [co-heir,] who is deceased; or shall "deliver it to [a son subsequently] born."¶

* BA'LAM-BHAT'T'A. † GAUTAMA, 3. 6. ‡ YA'JNYAWALCYA, 3. 47. See MENU, 6. 15.
§ BA'LAM-BHAT'T'A. || Ibid. ¶ YA'JNYAWALCYA, 2. 139.

2. Explanation of re-united parcener.

2. Effects, which had been divided and which are again mixed together, are termed re-united. He, to whom such appertain, is a re-united parcener.

3. Re-union is between certain relations only: so VRÍHASPATI.

3. That cannot take place with any person indifferently: but only with a father, a brother, or a paternal uncle: as VRÍHASPATI declares. "He, who, being once separated, dwells "again through affection with his father, "brother, or paternal uncle, is termed re-united."

4. The deceased's share must be given to his posthumous son; or, if there be none, may be retained by the re-united parcener.

4. The share or allotment of such a re-united parcener deceased, must be delivered by the surviving re-united parcener, to a son subsequently born, in the case where the widow's pregnancy was unknown at the time of the distribution. Or, on failure of male issue, he, and not the widow, nor any other heirs, shall take the inheritance.

5. A limitation of the preceding rule is contained in the sequel of the text.

5. The author states an exception to the rule, that a re-united brother shall keep the share of his re-united co-heir: "But an uterine [or "whole] brother shall thus retain or deli- "ver the allotment of his uterine relation."*

6. Exposition of it. The whole blood has the preference before the half blood.

6. The words "re-united brother" and "re-united co-heir" are understood. Hence the construction, as in the preceding part of the text, is this: The allotment of a re-united brother of the whole blood, who is deceased, shall be delivered, by the surviving re-united brother of the whole blood, to a son born subsequently. But, on failure of such issue, he shall retain it. Thus, if there be brothers of the whole blood and half blood, an uterine [or

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Annotations.

4. *Or, on failure of male issue, he, and not the widow, &c., shall take the inheritance.*] The singular number is here indeterminate. Therefore, if there be two or more re-united parceners, they shall divide the estate. A maintenance must be allowed to the widow. BA'LAM-BHAT'T'A.

6. *A son born subsequently.*] The widow's pregnancy not having been apparent at the time of the partition.

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* YA'JNYAWALCYA, 2. 139.

whole] brother, being a re-united parcener, not a half brother who is so, takes the estate of the re-united uterine brother. This is an exception to what had been before said (§ 1.)

7. YA'JNYAWALCYA delivers a rule concerning the participation of brethren of the half blood.

7. Next, in answer to the inquiry, who shall take the succession when a re-united parcener dies leaving no male issue, and there exists a whole brother not re-united, as well as a half brother who was associated with the deceased? the author delivers a reason why both shall take and divide the estate. "A half brother, "being again associated, may take the succession, not a half "brother though not re-united: but one, united [by blood, "though not by co-parcenery,] may obtain the property; and "not [exclusively] the son of a different mother."*

8. Interpretation of the text. The half brother may share if again associated in family partnership.

8. A half brother, (meaning one born of a rival wife,) being a re-united parcener, takes the estate; but a half brother, who was not re-united, does not obtain the goods. Thus, by the direct provisions of the text, and by the exception, re-union is shown to be a reason for a half brother's succession.

9. And the whole brother, though not so associated.

9. The term "not re-united" is connected also with what follows: and hence, even one who was not again associated, may take the effects of a deceased re-united parcener. Who is he? The author replies: "one united;" that is, one united by the identity of the womb [in which he was

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Annotations.

7. "*A half brother, being again associated, &c.*"] The text admits of different interpretations besides variations in the reading. See JÍMU'TA-VA'HANA, C. 11. Sect. 5. § 13.—14.

9. *The term "not re-united" is connected also with what follows.*] It is connected with both phrases, like a crow looking two ways at once. Hence it constitutes, with what follows, another sentence. *Subód'hiní.*

One united by the identity of the womb.] In like manner, a father, though not re-united with the family, shall take a share of the property of his son; and a son, though not re-united, shall receive a share of the estate of his father. from a re-united parcener. This, according to the author of the *Subód'hiní*, is implied: the *Véda* describing the wife as becoming a mother to her husband, who is identified with his offspring. But BA'LAM-BHAT'T'A does not allow the inference.

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* YA'JNYAWALCYA, 2. 140.

conceived;] in other words, an uterine or whole brother. It is thus declared, that relation by the whole blood is a reason for the succession of the brother, though not re-united in co-parcenery.

10. For the half brother, though associated, is not sole heir.

10. The term "united" likewise is connected with what follows: and here it signifies re-united [as a co-parcener.] The words "not the "son of a different mother" must be interpreted by supplying the affirmative particle *(éva)* understood. Though he be a re-united parcener, yet, being issue of a different mother, he shall not exclusively take the estate of his associated co-heir.

11. Thus both may share, for the rights of both may subsist together.

11. Thus, by the occurrence of the word "though" *(api)* in one sentence ("though not re-united," &c., § 7) and by the denial implied in the restrictive affirmation *(éva)* "exclusively," understood in the other, ("one "united may take the property, and not *exclusively* the son "of a different mother;") it is shown, that a whole brother not re-united, and a half brother being re-united, shall take and share the estate: for the reasons of both rights may subsist at the same instant.

12. This is confirmed by passages of MENU.

12. This is made clear by MENU, who, after premising partition among re-united parceners ("If "brethren, once divided and living again "together as parceners, make a second partition;"*) declares "should the eldest or youngest of several "brothers be deprived of his allotment at the distribution, or "should any one of them die, his share shall not be lost: but "his uterine brothers and sisters, and such brothers as were "re-united after a separation, shall assemble together and "divide his share equally."†

13. Interpretation of the text.

13. Among re-united brothers, if the eldest, the youngest or the middlemost, at the delivery of shares, (for the indeclinable termi-

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Annotations.

11. *The reasons of both rights may subsist at the same instant.*] The re-union of the half brother in family partnership, and the whole brother's relation by blood. BA'LAM-BHAT'T'A.

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* MENU, 9. 210. † Ibid., 9. 211.—212.

nation of the word denotes any case;) that is, at the time of making a partition, lose or forfeit his share by his entrance into another order [that of a hermit or ascetic,*] or by the guilt of sacrilege, or by any other disqualification; or if he be dead; his allotment does not lapse, but shall be set apart. The meaning is, that the re-united parceners shall not exclusively take it. The author states the appropriation of the share so reserved: "His uterine brothers and sisters, &c." (§ 12.) Brothers of the whole blood, or by the same mother, though not re-united, share that allotment so set apart. Even though they had gone to a different country, still, returning thence and assembling together, they share it: and that "equally;" not by a distribution of greater and less shares. Brothers of the half blood, who were re-united after separation, and sisters by the same mother, likewise participate. They inherit the estate and divide it in equal shares.

SECTION X.

On exclusion from inheritance.

1. An exception to the succession of heirs is propounded by YA'JNYAWALCYA.

1. THE author states an exception to what has been said by him respecting the succession of the son, the widow and other heirs, as well as the re-united parcener. "An impotent person, an "outcast, and his issue, one lame, a madman,

Annotations.

13. *They inherit the estate and divide it in equal shares.*] This supposes the brothers of the half blood to belong to the same tribe. But, if they are of different tribes, the shares are four, three, two or one, in the order of the classes; since there is no reason for restricting that rule of distribution. BA'LAM-BHAT'T'A.

1. "*An impotent person, an outcast, and his issue.*"] The initial words are transposed by JI'MU'TA-VA'HANA. C. 5. § 10.

* BA'LAM-BHAT'T'A.

"an idiot, a blind man, and a person afflicted with an in "curable disease, as well as others [similarly disqualified,] "must be maintained: excluding them, however, from "participation."*

2. Exposition of the text. Impotent persons, outcasts, madmen, idiots, and persons incurably diseased, are excluded from inheritance.

2. "An impotent person," one of the third gender (or neuter sex.) "An outcast;" one guilty of sacrilege or other heinous crime. "His issue;" the offspring of an outcast. "Lame;" deprived of the use of his feet. "A madman;" affected by any of the various sorts of insanity proceeding from air, bile, or phlegm, from delirium, or from planetary influence. "An idiot;" a person deprived of the internal faculty: meaning one incapable of discriminating right from wrong. "Blind;" destitute of the visual organ. "Afflicted with an incurable disease;" affected by an irremediable distemper, such as marasmus or the like.

3. So are persons entering into an order of devotion, an unnatural son, a sinner, and one who has lost a sense or a limb: according to VASISHT'HA, NA'REDA, and MENU.

3. Under the term "others" are comprehended one who has entered into an order of devotion, an enemy to his father, a sinner in an inferior degree, and a person deaf, dumb, or wanting any organ. Thus VASISHT'HA says, "They, who have entered into another "order, are debarred from shares."† NA'REDA also declares, "An enemy to his father, an "outcast, an impotent person, and one who "is addicted to vice, take no shares of the inheritance even "though they be legitimate: much less, if they be sons of "the wife by an appointed kinsman."‡ MENU likewise ordains, "Impotent persons "and outcasts are excluded from a share of the heritage;

Annotations.

"*An impotent person.*"] Whether naturally so, or by castration. BA'LAM-BHAT'T'A.

The offspring of an outcast.] Of one who has not performed the requisite penance and expiation. BA'LAM-BHAT'T'A.

3. "*They, who have entered into another order.*"] Into one of devotion. The orders of devotion are, 1st, that of the professed or perpetual student; 2nd, that of the hermit; 3rd, the last order or that of the ascetic. BA'LAM-BHAT'T'A.

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* YA'JNYAWALCYA, 2. 142. † VASISHT'HA, 17. 48. ‡ NA'REDA, 13. 21.

" and so are persons born blind and deaf, as well as madmen, " idiots, the dumb, and those who have lost a sense [or " a limb."*]

4. Explanation of the text.

4. Those who have lost a sense or a limb.] Any person, who is deprived of an organ [of sense or action] by disease or other cause, is said to have lost that sense or limb.

5. The persons above described are excluded from participation; but are entitled to a maintenance, as declared by MENU.

5. These persons (the impotent man and the rest) are excluded from participation. They do not share the estate. They must be supported by an allowance of food and raiment only: and the penalty of degradation is incurred, if they be not maintained. For MENU says, " But it is fit, that a wise man should give " all of them food and raiment without stint to the best of " his power: for he, who gives it not, shall be deemed an " outcast."† " Without stint" signifies 'for life.'

6. The defect must have preceded the partition.

6. They are debarred of their shares, if their disqualification arose before the division of the property. But one, already separated from his co-heirs, is not deprived of his allotment.

7. If it be removed afterwards, a share must be given, in like manner as a son born after partition takes an allotment.

7. If the defect be removed by medicaments or other means, [as penance and atonement‡] at a period subsequent to partition, the right of participation takes effect, by analogy [to the case of a son born after separation.] " When the sons have been separated, one, " who is afterwards born of a woman equal " in class, shares the distribution."§

Annotations.

5. " *A wise man should give all of them food and raiment.*"] Other authorities (as DE'VALA and BAUD'HA'YANA) except the outcast and his offspring. That exception not being here made, it is to be inferred, that one, whose offence may be expiated and who is disposed to perform the enjoined penance, should be maintained; not one whose crime is inexpiable. BA'LAM-BHAT'T'A.

6. *If their disqualification arose before the division of the property.*] The disqualification of the outcast and the rest who are not excluded for natural defects. BA'LAM-BHAT'T'A.

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* MENU, 9. 201. † Ibid., 9. 202. ‡ BA'LAM-BHAT'T'A
§ YA'JNYAWALCYA. 2. 123 Vide supra. C. 1. Sect. 6. § 1.

8. The masculine gender is not here used restrictively in speaking of an outcast and the rest. It must be therefore understood, that the wife, the daughter, the mother, or any other female, being disqualified for any of the defects which have been specified, is likewise excluded from participation.

8. A woman is excluded for like defects.

9. The disinherison of the persons above-described seeming to imply disinherison of their sons, the author adds: "But their sons, whether "legitimate, or the offspring of the wife by "a kinsman, are entitled to allotments, if "free from similar defects."*

9. Sons shall share, if free from similar disqualifications. So YA'JNYAWALCYA.

10. The sons of these persons, whether they be legitimate offspring or issue of the wife, are entitled to allotments, or are rightful partakers of shares; provided they be faultless or free from defects which should bar their participation, such as impotency and the like.

10. Interpretation of the text.

11. Of these [two descriptions of offspring†] the impotent man may have that termed issue of the wife; the rest may have legitimate progeny likewise. The specific mention of "legitimate" issue and "offspring of the wife" is intended to forbid the adoption of other sons.

11. Disqualified persons are not to adopt sons.

The author delivers a special rule concerning the daughters of disqualified persons: "Their daughters must be maintained likewise, until they are provided "with husbands."‡

12. Their daughters must be supported, until married: as YA'JNYAWALCYA declares.

13. Their daughters, or the female children of such persons, must be supported, until they be disposed of in marriage. Under the suggestion of the word "likewise," the expenses of their nuptials must be also defrayed.

13. Explanation of the text.

14. The author adds a distinct maxim respecting the wives of disqualified persons: "Their child-"less wives, conducting themselves aright, "must be supported; but such, as are

14. Their wives must be maintained, unless unchaste:

* YA'JNYAWALCYA, 2. 142. † BA'LAM-BHAT'T'A. ‡ 2. 142.

so YA'JNYAWALCYA directs.

"unchaste, should be expelled; and so indeed should those, who are perverse."*

15. Exposition of the passage.

15. The wives of these persons, being destitute of male issue, and being correct in their conduct, or behaving virtuously, must be supported or maintained. But, if unchaste, they must be expelled; and so may those, who are perverse. These last may indeed be expelled: but they must be supported, provided they be not unchaste. For a maintenance must not be refused solely on account of perverseness.

SECTION XI.

On the separate property of a woman.

1. Woman's property described by YA'JNYAWALCYA.

1. AFTER briefly propounding the division of wealth left by the husband and wife, ("Let sons "divide equally both the effects and the "debts, after the demise of their two "parents."†) the partition of a man's goods has been described at large. The author, now intending to explain fully the distribution of a woman's property, begins by setting forth the nature of it: "What was given to a woman by "the father, the mother, the husband or a brother, or "received by her at the nuptial fire, or presented to her on "her husband's marriage to another wife, as also any "other [separate acquisition,] is denominated a woman's "property."‡

Annotations.

1. *As also any other separate acquisition.*] In JIMU'TA-VA'HANA's quotation of the text, (C. 4, Sect. 1. § 13.) the conjunctive and pleonastic particles *chaiva (cha-éva)* are here substituted for the suppletory term *ádya*. That reading is censured by BA'LAM-BHAT'T'A.

* YA'JNYAWALCYA, 2. 143 † Ibid., 2. 118. Vide supra, C. 1. Sect. 3. § 1.
‡ Ibid., 2. 144.

2. Interpretation of the text.

2. That, which was given by the father, by the mother, by the husband, or by a brother; and that, which was presented [to the bride] by the maternal uncles and the rest [as paternal uncles, maternal aunts, &c.*] at the time of the wedding, before the nuptial fire; and a gift on a second marriage, or gratuity on account of supercession, as will be subsequently explained, ("To a "woman whose husband marries a second wife, let him give an equal sum as a compensation for the supercession." § 34.) and also property which she may have acquired by inheritance, purchase, partition, seizure or finding,† are denominated by MENU and the rest 'woman's property.'

3. Woman's property is not a technical expression.

3. The term 'woman's property' conforms, in its import, with its etymology, and is not technical: for, if the literal sense be admissible, a technical acceptation is improper.

4. MENU's enumeration of six sorts denies a less number, not a greater.

4. The enumeration of six sorts of woman's property by MENU ("What was given before the "nuptial fire, what was presented in the "bridal procession, what has been bestowed "in token of affection or respect, and what "has been received by her from her brother, her mother.

Annotations.

2. *Before the nuptial fire.*] Near it. *Subód'hini.*

On account of supercession.] Supercession is the contracting of a second marriage through the influence of passion, while a first wife lives, who was married to fulfil religious obligations. *Subód'hini.*

Property which she may have acquired by inheritance.] The commentator, BA'LAM-BHAT'T'A, defends his author against the writers of the eastern school (JÍMU'TA-VA'HANA, &c.) on this point. Wealth, devolving on a woman by inheritance, is not classed by the authorities of that school with 'a woman's property.' See JIMU'TA-VA'HANA, C. 4. and C. 11. Sect. 1. § 8.

3. *The term 'woman's property' is not technical.*] This is contrary to the doctrine of JÍMU'TA-VA'HANA, C. 4.

4. "*Bestowed in token of affection or respect.*"] This passage is read differently in the *Retnácará* and by JÍMU'TA-VA'HANA (C. 4. Sect. 1. § 4.) It is here translated conformably with BA'LAM-BHAT'T'A's interpretation grounded on the subsequent text of CA'TYA'YANA (§ 5.); where two reasons of an affectionate

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* BA'LAM-BHAT'T'A. † Vide C. 1. Sect. 1 § 8

"or her father, are denominated the six-fold property of a "woman;"*) is intended, not as a restriction of a greater number, but as a denial of a less.

5. Definitions of presents given before the nuptial fire and so forth have been delivered by CA'TYA'YANA: "What is given to women at the "time of their marriage, near the nuptial "fire, is celebrated by the wise as women's property bestow-"ed before the nuptial fire. That, again, which a woman "receives while she is conducted from her father's house [to "her husband's dwelling,] is instanced as the property of a "woman, under the name of gift presented in the bridal "procession. Whatever has been given to her through affec-"tion by her mother-in-law or by her father-in-law, or has "been offered to her as a token of respect, is denominated "an affectionate present. That, which is received by a "married woman or by a maiden, in the house of her hus-"band or of her father, from her brother or from her parents, "is termed a kind gift."

5. CA'TYA'YANA defines those several sorts.

Annotations.

gift are stated: one, simple affection; the other, respect shown by an obeisance at the woman's feet.

5. "*From her father's house.*"] The *Retnácara* and *Chintáman'i* read "from the parental abode." See JÍMU'TA-VA'HANA, C. 4. Sect. 1. § 6.

"*Offered to her as a token of respect.*"] Given to her at the time of making an obeisance at her feet. *Smrĭti-chandrica.*

"*Denominated an affectionate present.*"] This reading is followed in the *Smrĭti-chandrica, Viramitródaya,* &c. But the *Retnácara, Chintáman'i,* and *Vivúda-chandra* read 'denominated an acquisition through loveliness;' *lávanyárjitam* instead of *príti-dattam.*

"*From her brother or from her parents.*"] The *Calpataru* reads "from her husband." See JÍMU'TA-VA'HANA, C. 4. Sect. 2. § 21.

"*Termed a kind gift.*"] So the commentary of BA'LAM-BHAT'T'A explains *saudáyica,* as bearing the same sense with its etymon *sudáya.* He censures the interpretation which JÍMU'TA-VA'HANA has given. (C. 4. Sect. 1. § 22.)

* MENU, 9. 194.

6. Other sorts noticed by YA'JNYAWALCYA. Explanation of his text.

6. Besides [the author says,] "That which has been "given to her by her kindred; as well as "her fee or gratuity, or any thing bestowed "after marriage."* What is given to a damsel by her kindred; by the relations of her mother, or those of her father. The gratuity, for the receipt of which a girl is given in marriage. What is bestowed or given after marriage, or subsequently to the nuptials.

7. CA'TYA'YANA'S definition of a gift subsequent. Exposition of the passage.

7. It is said by CA'TYA'YANA, "What has been received "by a woman from the family of her hus-"band at a time posterior to her marriage, is "called a gift subsequent; and so is that "which is similarly received from the family "of her father." It is celebrated as woman's property: for this passage is connected with that which had gone before. (§ 5.)

8. A woman's property goes to her kindred.

8. A woman's property has been thus described. The author next propounds the distribution of it: "Her kinsmen take it, if she die with-"out issue."†

9. Her husband or other heirs inherit on failure of issue.

9. If a woman die "without issue;" that is, leaving no progeny; in other words, having no daughter, nor daughter's daughter, nor daughter's son, nor son, nor son's son; the woman's property, as above described, shall be taken by her kinsmen, namely, her husband and the rest, as will be [forthwith‡] explained.

10. The heirs are different, according to the form

10. The kinsmen have been declared generally to be competent to succeed to a woman's property. The author now distinguishes different heirs according to the diversity of

Annotations.

6. *The gratuity, for the receipt of which a girl is given in marriage.*] This relates to a marriage in the form termed *A'sura* or the like. BA'LAM-BHAT'T'A.

7. "*Similarly received from the family of her father.*"] The *Retnácara* reads 'from her own family;' JÍMU'TA-VA'HANA, 'from the family of her kindred.' See JÍMU'TA-VA'HANA, C. 4. Sect. 1. § 2.

* YA'JNYAWALCYA 2. 145. † Ibid. 2. 145. ‡ BA'LAM-BHAT'T'A.

of the marriage ceremony: as shown by YA'JNYAWALCYA.

the marriage ceremonies. "The property "of a childless woman, married in the form "denominated *Bráhma*, or in any of the "four [unblamed modes of marriage,] goes "to her husband: but, if she leave progeny, it will go to her "[daughter's] daughters: and, in other forms of marriage, "[as the *A'sura*, &c.,] it goes to her father [and mother, on "failure of her own issue."*]

11. Explanation of the text. In four unblamed forms of marriage, the husband is first entitled to the succession: after him, his nearest of kin.

11. Of a woman dying without issue as before stated, and who had become a wife by any of the four modes of marriage denominated *Bráhma*, *Daiva*, *A'rsha*, and *Prájápatya*, the [whole†] property, as before described, belongs in the first place to her husband. On failure of him, it goes to his nearest kinsmen *(sapin'd'as)* allied by funeral oblations. But, in the other forms of marriage called *A'sura*, *Gánd'harba*, *Rácshasa* and *Pais'ácha;* the property of a childless woman goes to her parents, that is, to her father and mother. The succession devolves first (and the reason has been before explained,‡) on the mother, who is virtually exhibited [first] in the elliptical phrase *pitrigámi* implying 'goes '*(gach'hati)* to both parents *(pitarau;)* 'that is, to the mother and to the father.' On failure of them, their nextof kin take the succession.

In the four other forms of marriage, the parents inherit; and first the mother; after her, the father: failing them, their next of kin.

12. In every form of marriage, if there be issue, daughters inherit; or grand-daughters.

12. In all forms of marriage, if the woman "leave progeny;" that is, if she have issue; her property devolves on her daughters. In this place, by the term "daughters," grand-daughters are signified; for the immediate female descendants are expressly mentioned in a preceding passage; "the daughters share the residue of "their mother's property, after payment of her debts."§

Annotations.

11. *Dying without issue as before stated.*] Without any of the five descendants abovementioned (§ 9.) BA'LAM-BHAT'T'A.

12. *In all forms of marriage.*] Several variations in the reading of this passage are noticed by BA'LAM-BHAT'T'A: as *sarvéshw api*, or *sarvéshw éva*, or *sarvéshu*. There is only a shade of difference in the interpretation.

* YA'JNYAWALCYA, 2. 146. † BA'LAM-BHAT'T'A. ‡ Sect. 3.

§ YA'JNYAWALCYA. 2. 118. Vide supra. C. 1. Sect. 3. § 8.

13. Hence, if the mother be dead, daughters take her property in the first instance: and here, in the case of competition between married and maiden daughters, the unmarried take the succession; but, on failure of them, the married daughters: and here again, in the case of competition between such as are provided and those who are unendowed, the unendowed take the succession first; but, on failure of them, those who are endowed. Thus GAUTAMA says, "A woman's property goes "to her daughters unmarried, or unprovided;"* 'or provided,' as is implied by the conjunctive particle in the text. "Unprovided" are such as are destitute of wealth or without issue.

13. First, the unmarried daughter; next, the married one, who is unprovided; lastly, one who has a provision.

14. But this [rule, for the daughter's succession to the mother's goods,†] is exclusive of the fee or gratuity. For that goes to brothers of the whole blood, conformably with the text of GAUTAMA: "The sister's fee belongs to the "uterine brothers: after [the death of] the mother."‡

14. But brothers inherit the fee or gratuity; as ordained by GAUTAMA.

15. On failure of all daughters, the grand-daughters in the female line take the succession under this text: "if she leave pro-"geny, it goes to her [daughter's] daugh-"ters."§

15. After daughters, grand-daughters in the female line inherit.

16. If there be a multitude of these [grand-daughters,‖] children of different mothers, and unequal in number, shares should be allotted to them though their

16. They share the allotments of their respective mothers.

Annotations.

14. "*After the death of the mother.*"] This version is according to the interpretation given in the *Subód'hini;* which agrees with that of the scholiast of GAUTAMA, the *Calpataru* and other authorities. But the text is read and explained differently by JÍMU'TA-VA'HANA. (C. 4. Sect. 3. § 27.)

BA'LAM-BHAT'T'A understands by the term 'mother,' in this place, the woman herself, or, in short, the sister, after whose death her fee or nuptial gratuity goes to her brothers.

16. *Children of different mothers, and unequal in number.*] Where the daughters were numerous, but are not living; and their female children are unequal in number, one having left a single daughter; another, two; and a

* GAUTAMA, 28, 22. Vide supra. C. 1 Sect 3. § 11 † BA'LAM-BHAT'T'A.
‡ GAUTAMA, 28 23 § Vide § 10 & 12. ‖ BA'LAM-BHAT'T'A.

So GAUTAMA directs.

mothers, as directed by GAUTAMA: "Or "the partition may be according to the "mothers: and a particular distribution may be made in the "respective sets."*

17. But, if there be daughters, a trifle only is to be given to the grand-daughters.

So MENU.

17. But if there be daughters as well as daughter's daughters, a trifle only is to be given to the grand-daughters. So MENU declares: "Even to the daughters of those daughters, "something should be given, as may be fit, "from the assets of their maternal grand-"mother, on the score of natural affection."†

18. In default of those grand-daughters; the sons of daughters inherit: as hinted by NA'REDA.

18. On failure also of daughter's daughters, the daughter's sons are entitled to the succession. Thus NA'REDA says, "Let daughters "divide their mother's wealth; or, on fai-"lure of daughters, their male issue."‡ For the pronoun refers to the contiguous term "daughters."

19. After them, the male issue succeeds.

This is confirmed by MENU.

19. If there be no grandsons in the female line, sons take the property: for it has been already declared, "the [male] issue succeeds in "their default."§ MENU likewise shows the right of sons, as well as of daughters, to their mother's effects: "When the mother is dead, let all "the uterine brothers and the uterine sisters equally divide "the maternal estate."||

Annotations.

third, three; how shall the maternal grandmother's property be distributed among her grand-daughters? Having put this question, the author reminds the readers of the mode of distribution of a paternal grandfather's estate among his grandsons. (C. 1. Sect. 5.) *Subód'hiní.*

18. "*Their male issue.*"] Several variations in the reading of the last term are noticed in the commentary of BA'LAM-BHAT'T'A; making the term either singular or plural, and putting it in the first or in the seventh case. He deduces, however, the same meaning from these different readings.

The pronoun refers to the contiguous term.] JÍMU'TA-VA'HANA, citing this passage for the succession of sons rather than of grandsons, seems to have understood the pronoun as referring to the remoter word 'mother.' See JÍMU'TA-VA'HANA. C. 4. Sect. 2. § 13.

19. "*Let all the uterine brothers . . . . equally divide.*"] In the *Calpataru* the text is read "let all the sons by the same mother divide:" *sarvé*

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* GAUTAMA, 28. 15. † MENU, 9. 193. ‡ NA'REDA, 13. 1.
§ YA'JNYAWALCYA, 2. 118. Vide supra. C. 1. Sect. 3. § 12. || MENU, 9. 192.

20 Exposition of the text. The brothers and sisters do not share together; but successively.

20. 'All the uterine brothers should divide the 'maternal estate equally; and so should 'sisters by the same mothers.' Such is the construction: and the meaning is, not that 'brothers and sisters share together;' for reciprocation is not indicated, since the abridged form of the conjunctive compound has not been employed: but the conjunctive particle (*cha*) is here very properly used with reference to the person making the partition; as in the example, DE'VADATTA practises agriculture, and so does YAJNYADATTA.

Annotations.

putráh sahódaráh instead of *saman sarvé sahódaráh*.

20. *Since the abridged form of the conjunctive compound has not been employed.*] Nouns coalesce and form a single word denominated *dwandwa* or conjunctive compound, when the sense of the conjunctive particle (*cha* 'and') is denoted. PA'N'INI, 2. 2. 29. Vide supra Sect. 3. § 2.

The import of the particle, here intended, is either *reciprocation (itarétara)* explained to be 'the union, in regard to a single matter, of things specifically 'different, but mutually related, and mixed or associated, though contrasted;' or it is *cumulation (samáhára)* explained as 'the union of such things, by an 'association, in which contrast is not marked.' The other senses of the conjunctive particle are *assemblage (samuchchaya)* or 'the gathering together of 'two or more things independent of each other, but assembled in idea with 'reference to some common action or circumstance;' and *superaddition (anwáchaya)* or 'the connexion of a secondary and unessential object with a 'primary and principal one, through a separate action or circumstance consequent to it.' In the two last senses of the conjunctive particle, there is not such a connexion of the terms as authorizes their coalition to form a compound term. CAIYAT'A, *Padamanjari, &c.*

If *reciprocation*, as above explained, were meant to be indicated in the text of MENU (§ 19.), the word *bhratri* "brother" would have been used, inflected however in the dual number to denote 'brother and sister' (PA'N'INI, 1. 2. 68.); or else 'children,' or some generic term, would have been employed in the plural (PA'N'INI, 1. 2. 64.) But the text is not so expressed. Consequently *reciprocation* is not indicated. *Subód'hiní* and BA'LAM-BHAT'T'A.

The conjunctive particle is here very properly used.] It is employed in one of the acceptations, which do not admit of nouns coalescing in a compound term, namely, in that of superaddition, as in the example which follows. 'D. practises agriculture; and so does Y.' 'Brothers share equally; so do sisters.'

With reference to the person making the partition.] 'Another reading of this passage is noticed in the commentary of BA'LAM-BHAT'T'A: "with the

21 No deduction for the eldest brother. The whole blood excludes the half blood.

21. "Equally" is specified (§ 19.) to forbid the allotment of deductions [to the eldest and so forth.] The whole blood is mentioned to exclude the half blood.

22. The step-daughter may inherit, if she be of a superior tribe.

So MENU declares.

22. But, though springing from a different mother, the daughter of a rival wife, being superior by class, shall take the property of a childless woman who belongs to an inferior tribe. Or, on failure of the step-daughter, her issue shall succeed. So MENU declares: "The wealth of a woman, which has been in any manner "given to her by her father, let the *Bráhman'i* damsel take; "or let it belong to her offspring."*

23. This intends any superior tribe.

23. The mention of a *Bráhman'i* includes any superior class. Hence the daughter of a *Cshátriya* wife takes the goods of a childless *Vais'ya*: [and the daughter of a *Bráhman'i*, *Cshátriya*, or *Vais'ya*, inherits the property of a *S'údra*.†]

24. After sons, grandsons inherit.

24. On failure of sons, grandsons inherit their paternal grandmother's wealth. For GAUTAMA says, "They, who share the inheritance, must pay the debts:"‡ and the grandsons are bound to discharge the debts of their paternal grandmother; for the text expresses "Debts must be paid by sons and son's sons."§

25. Next, the husband and other heirs, as above mentioned.

25. On failure of grandsons also, the husband and other relatives abovementioned|| are successors to the wealth.

Annotations.

import of superaddition relatively "to the person who makes the partition;" *Vibhága-cartritwén'ánwáchayén'ápi*, instead of *vibhága-cartritw'ánwayén'ápi*.

23. *Hence the daughter of a* Csbátriya *wife takes the goods of a childless* Vais'ya.] This inference is contested by S'RÍCRISHN'A in his commentary on the *Dáya-bhága* of JÍMU'TA-VA'HANA.

24. *The grandsons are bound to discharge the debts.*] 'Since one text 'declares them liable for the debts; and the other provides, that the debts shall 'be paid by those who share the inheritance; it follows, that they share the 'heritage.' *Subód'hiní, &c.*

* MENU, 9. 198. † *Subód'hiní* and BA'LAM-BHAT'T'A. ‡ GAUTAMA, 12. 32.
§ YA'JNYAWALCYA, 2. 50. || § 9.—11.

26. A passage of YA'JNYAWALCYA concerning an affianced damsel.

26. On occasion of treating of woman's property, the author adds something concerning a betrothed maiden: "For detaining a damsel, after "affiancing her, the offender should be "fined, and should also make good the "expenditure together with interest."*

27. Interpretation of the text. One, who betroths a damsel and afterwards retracts the engagement without cause, shall be fined.

27. One, who has verbally given a damsel [in marriage] but retracts the gift, must be fined by the king, in proportion to [the amount of] the property or [the magnitude of] the offence; and according to [the rank of the parties, their qualities,† and] other circumstances. This is applicable, if there be no sufficient motive for retracting the engagement. But, if there be good cause, he shall not be fined, since retraction is authorized in such a case. "The damsel, though betrothed, may "be withheld, if a preferable suitor present himself."‡

28. The expenses incurred must be made good.

28. Whatever has been expended, on account of the espousals, by the [intended] bridegroom, [or by his father or guardian,§] for the gratification of his own or of the damsel's relations, must be repaid in full, with interest, by the affiancer to the bridegroom.

29. If the betrothed damsel die, the bridegroom's presents are returned to him; as directed by YA'JNYAWALCYA.

29. Should a damsel, anyhow affianced, die before the completion of the marriage, what is to be done in that case? The author replies, "If she die [after troth plighted,] let the "bridegroom take back the gifts which "he had presented; paying, however, the "charges on both sides."‖

30. Exposition of the text.

30. If a betrothed damsel die, the bridegroom shall take the rings and other presents, or the nuptial gratuity, which had been previously

Annotations.

29. *Anyhow affianced.*] By a religious rite, or by taking of hands, or in any other manner. BA'LAM-BHAT'T'A.

30. *Clearing or discharging.*] The common reading of the passage is *vigan'ya* "accounting;" but BA'LAM-BHAT'T'A rejects that reading, and substitutes *vigamya* "removing" or 'discharging.'

* YA'JNYAWALCYA, 2. 147. † BA'LAM-BHAT'T'A. ‡ YA'JNYAWALCYA, 1. 65.
§ BA'LAM-BHAT'T'A. ‖ YA'JNYAWALCYA, 2. 147.

given by him [to the bride,] "paying, however, the charges on both sides:" that is, clearing or discharging the expense which has been incurred both by the person who gave the damsel and by himself, he may take the residue. But her uterine brothers shall have the ornaments for the head, and other gifts, which may have been presented to the maiden by her maternal grandfather, [or her paternal uncle,*] or other relations; as well as the property, which may have been regularly inherited by her. For BAUD'HA'YANA says: "The wealth of a deceased damsel, let the uterine brethren "themselves take. On failure of them, it shall belong to the "mother; or, if she be dead, to the father."†

31. A husband, in distress, using his wife's property, is not liable to make it good.

So YA'JNYAWALCYA declares.

31. It has been declared, that the property of a woman leaving no issue, goes to her husband. The author now shows, that, in certain circumstances, a husband is allowed to take his wife's goods in her life-time, and although she have issue: "A husband is not liable "to make good the property of his wife "taken by him in a famine, or for the performance of a duty, "or during illness, or while under restraint."

32. Explanation of the passage.

32. In a famine, for the preservation of the family, or at a time when a religious duty must indispensably be performed, or in illness, or "during restraint" or confinement in prison or under corporal penalties, the husband, being destitute of other funds and therefore taking his wife's property, is not liable to restore it. But, if he seize it in any other manner [or under other circumstances,] he must make it good.

Annotations.

He may take the residue.] The meaning is this: after deducting from the damsel's property, the amount which has been expended by the giver or acceptor of the maid, or by their fathers or other relations on both sides, in contemplation of the marriage, let the residue be delivered to the bridegroom. *Subód'hiní.*

32. *Is not liable to restore it.*] He is not positively required to make it good. BA'LAM-BHAT'T'A.

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* BA'LAM-BHAT'T'A. † YA'JNYAWALCYA, 2. 148.

33. No other person, but her husband, may take her property.

NA'REDA and MENU denounce punishment against the offender.

33. The property of a woman must not be taken in her life-time by any other kinsman or heir but her husband: since punishment is denounced against such conduct: ("Their "kinsmen, who take their goods in their "life-time, a virtuous king should chastise "by inflicting the punishment of theft:"*) and it is pronounced an offence; "Such "ornaments, as are worn by women during the life of their "husband, the heirs of the husband shall not divide among "themselves: they, who do so, are degraded from their "tribe."†

34. A present on occasion of a second marriage described by YA'JNYAWALCYA.

34. A present made on her husband's marriage to another wife has been mentioned as a woman's property (§ 1.) The author describes such a present: "To a woman, "whose husband marries a second wife, let "him give an equal sum, [as a compensation] for the super-"cession, provided no separate property have been bestowed "on her: but, if any have been assigned, let him allot half."‡

35. Interpretation of the text.

35. She is said to be *superceded*, over whom a marriage is contracted. To a wife so superceded, as much should be given on account of the supercession, as is expended [in jewels and ornaments, or the like,§] for the second marriage: provided separate property had not been previously given to her by her husband; or by her father-in-law. But, if such property had been already bestowed on her, half the sum expended on the second marriage should be given. Here the word 'half' *(ardd'ha)* does not intend an exact moiety. So

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Annotations.

35. *Here the word half does not intend an exact moiety.*] The term, as it stands in the original text, is not neuter, that it should signify an equal part or exact moiety: but it is masculine, and signifies portion in general. *(Amera.* 1. 1. 2. 17.) *Subód'hini.*

BA'LAM-BHAT'T'A, citing a passage of the *Mahábháshya* to prove that *ardd'ha* in the masculine signifies half; interprets the quotation from the *Amera-Cósha* (1. 1. 2. 17.) as exhibiting *ardd'ha*, masculine and neuter, in the sense of moiety. He therefore rejects the foregoing explanation, and considers the word 'half' as employed in the text for an indefinite sense.

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* NA'REDA, as cited by BA'LAM-BHAT'T'A; but not found in his institutes.

† MENU, 9. 200. Vide supra. C. 1. Sect. 4. § 19.

‡ YA'JNYAWALCYA, 2. 149. § BA'LAM-BHAT'T'A.

much therefore should be paid, as will make the wealth, already conferred on her, equal to the prescribed amount of compensation. Such is the meaning.

SECTION XII.

On the evidence of a Partition.

1. Ya'jnyawalcya specifies the evidence of partition if doubted.

1. Having thus explained partition of heritage, the author next propounds the evidence by which it may be proved in a case of doubt. "When partition is denied, the fact of it "may be ascertained by the evidence of "kinsmen, relatives, and witnesses, and by written proof, or "by separate possession of house or field."*

2. Explanation of the text.

2. If partition be denied or disputed, the fact may be known and certainty be obtained by the testimony of kinsmen, relatives of the father or of the mother, such as maternal uncles and the rest, being competent witnesses as before described;† or by the evidence of a writing, or record of the partition. It may also be ascertained by separate or unmixed house and field.

3. Other proofs of separation are stated by Na'reda.

3. The practice of agriculture or other business pursued apart from the rest, and the observance of the five great sacraments‡ and other religious duties performed separately from them, are pronounced by Na'reda to be tokens of a partition. "If a question arise among co-heirs in regard to "the fact of partition, it must be ascertained by the evidence

Annotations.

2. "*By the testimony of kinsmen.*" Or rather strangers belonging to the same tribe with the parties. Ba'lam-bhat't'a.

* Ya'jnyawalcya, 2. 150. † In the preceding book on Evidence. ‡ Menu, 3. 69.

of kinsmen, by the record of the distribution, or by separate transaction of affairs. The religious duty of unseparated brethren is single. When partition indeed has been made, religious duties become separate for each of them."*

4. And again in a subsequent passage.

4. Other signs of previous separation are specified by the same author: "Separated, not unseparated brethren, may reciprocally bear "testimony, become sureties, bestow gifts, "and accept presents."†

Annotations.

3. "*By the record of the distribution.*"] Another reading is noticed by BA'LAM-BHAT'T'A: "by occupancy or by a writing;" *bhóga-léc'hyéna* instead of *bhága-léc'hyéna*. See JÍMU'TA-VA'HANA, C. 14. § 1.

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* NA'REDA, 12.—36. 37. † Ibid., 13. 39.

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